



Decision

Matter of: Portfolio Management Solutions, LLC; Competitive Choice, Inc.

File: B-408846; B-408846.4

Date: December 12, 2013

Terry Tomlinson for Portfolio Management Solutions, LLC, and Richard Young, for Competitive Choice, Inc., the protesters.

Johnathan M. Bailey, Esq., Bailey & Bailey, P.C., for Dawson Technical, LLC, the intervenor.

William M. Lackermann, Jr., Esq., Department of the Air Force, for the agency.

Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the realism of the awardee's proposed compensation plan is denied where the record shows that the agency reasonably concluded that the awardee's proposed compensation plan was realistic for the work proposed based on comparisons to salaries paid by other contractors under comparable contracts.

DECISION

Portfolio Management Solutions, LLC; of Washington, D.C., and Competitive Choice, Inc., of Houston, Texas, protest the award of a contract to Dawson Technical, LLC, of Boerne, Texas, under request for proposals (RFP) No. FA7014-13-R-3007, issued by the Department of the Air Force, for advisory and support services for the Air Force District of Washington Procurement Directorate (AFDW/PK). Portfolio and Competitive both argue that the agency did not reasonably evaluate the realism of Dawson's proposed employee compensation plan.

We deny the protest.¹

¹ Our Office did not issue a protective order in connection with this protest because neither Portfolio nor Competitive elected to retain counsel. A full version of the agency report was provided to our Office, while a redacted version of the report was
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BACKGROUND

The services to be provided under the RFP had previously been provided through a sole-source contract awarded under the Small Business Administration's 8(a) program. For the contract here, the Air Force conducted market research and concluded that there were a sufficient number of 8(a) businesses capable of providing the needed services for the RFP to be issued as a competitive 8(a) set-aside procurement. Contracting Officer's Statement at 1. The solicitation was issued on April 30, 2013, and anticipated the award of a labor-hour contract with fixed-price rates for a 1-year base period and two 1-year options.

The solicitation advised offerors that proposals would be evaluated based on three factors: (1) price, (2) technical, and (3) past performance. RFP at 69-70. The RFP further advised that offerors' proposals would be evaluated under the technical and past performance factors as acceptable or unacceptable, and that award would be made to the lowest-priced, technically acceptable offeror. Id. at 72.

As relevant here, the solicitation stated that the agency would evaluate an offeror's proposed total price and fully-burdened labor rates to determine whether the prices were "fair, reasonable and balanced." Id. at 70. The RFP advised offerors that "[u]nrealistically low or high proposed costs or prices, initially or subsequently, may be grounds for eliminating a proposal from competition either on the basis that the offeror does not understand the requirement or has submitted an unrealistic proposal." Id. The RFP also included Federal Acquisition Regulation (FAR) clause 52.222-46, which states that the agency will evaluate an offeror's proposed compensation plan "to assure that it reflects a sound management approach and understanding of the contract requirements," and further states that the evaluation "will include an assessment of the offeror's ability to provide uninterrupted high-quality work." FAR § 52.222-46(a); RFP at 9.

The Air Force received proposals from 25 offerors, including Portfolio, Commercial, and Dawson, by the closing date of June 17, 2013. Agency Report (AR),² Tab 22, Proposal Analysis Report (Aug. 21, 2013) at 5. The agency ranked the proposals from lowest to highest proposed price. The contracting officer noted that the

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furnished to the parties. We have reviewed the entire unredacted record in camera, including the agency's evaluation of Dawson's proposal. As much of the information reviewed by our Office is source selection sensitive and/or proprietary in nature, our discussion of the evaluation is necessarily limited.

² The agency reports for these protests used the same tab numbering system for documents, hence the citations here will be to the same documents for both reports.

proposals reflected a “step-ladder” distribution, wherein each offer was incrementally higher than the previous offeror, and also noted that no single offeror was “exorbitantly higher” than the next lowest offeror. Contracting Officer’s Statement at 7; see AR, Tab 22, Proposal Analysis Report (Aug. 21, 2013) at 5-6. After ranking the proposals by price, the Air Force evaluated whether the lowest-priced proposal was fair, reasonable, balanced and realistic, and was acceptable under the technical and past performance factors; if that proposal was not acceptable or otherwise eligible for award, the agency evaluated the next-lowest priced proposal. The agency did not conduct discussions with the offerors.

The Air Force reviewed the two lowest-price proposals, and concluded that neither was acceptable. In this regard, neither offeror’s proposal complied with the Service Contract Act (SCA) Wage Determination, both offerors failed to acknowledge the RFP amendments, and the second-lowest priced offeror also failed to submit a required organizational conflict of interest plan. AR, Tab 23, PAR Attachment 1, Responsiveness Review Checklist at 1-3; Contracting Officer’s Statement at 8.

The Air Force concluded that Dawson’s proposal, which was the third lowest-priced proposal, offered a fair, reasonable, balanced and realistic price of \$7,648,073.³ Contracting Officer’s Statement at 9; AR, Tab 20, Price Competition Memorandum (Aug. 14, 2013) at 3-5. The agency also found Dawson’s proposal to be acceptable under the technical and past performance factors. AR, Tab 22, Proposal Analysis Report (Aug. 21, 2013) at 10-17; Tab 27, Source Selection Decision Document at 4-8. The agency therefore made award to Dawson based on its lowest-priced, acceptable proposal. This protest to our Office followed.

DISCUSSION

Portfolio and Competitive argue that the Air Force unreasonably concluded that Dawson’s proposed price did not reflect a realistic level of compensation. In particular, the protesters contend that the agency did not reasonably evaluate the realism of the awardee’s proposed compensation, as required by FAR clause 52.222-46, because, the protester’s contend, the awardee’s overall proposed price was too low. We find no merit to these arguments.

³ Because the Air Force concluded that Dawson’s proposed price was fair, reasonable, balanced and realistic, and its proposal was acceptable under the technical and past performance factors, the agency did not evaluate the proposals of the higher-priced offerors. For the record, Portfolio’s proposed price was \$12,311,335 (ranked 20th out of 25 proposals), and Competitive’s price was \$12,873,951 (ranked 22nd out of 25 proposals). AR, Tab 20, Price Competition Memorandum (Aug. 14, 2013) at 3.

As discussed above, FAR clause 52.222-46 states that the agency will evaluate an offeror's proposed compensation plan "to assure that it reflects a sound management approach and understanding of the contract requirements," and further states that the evaluation "will include an assessment of the offeror's ability to provide uninterrupted high-quality work." FAR § 52.222-46(a). As relevant here, the clause also states that the compensation plan "will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation." Id. In the context of a fixed-price labor hour contract, our Office has held that this FAR clause anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding an offeror's proposed compensation. See Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Navistar Defense, LLC; BAE Sys., Tactical Vehicles Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 17.

The record here shows that the Air Force evaluated the realism of Dawson's proposed compensation plan based on details provided in its proposal, and the level of salaries as compared to other relevant contracts. First, the contracting officer notes that Dawson's proposal provided a breakdown of the base wages for each labor category required under the RFP, as well as a breakdown of the fringe benefits, cost allocation, overhead cost allocation, general and administrative cost allocation, and profit allocation. Contracting Officer's Statement at 9; AR, Tab 20, Price Competition Memorandum (Aug. 14, 2013) at 4. The contracting officer also states that Dawson's technical proposal outlined the methods by which it recruited and retained personnel with a competitive compensation package and job training programs that provide value to and attract candidates for contract placement. Contracting Officer's Statement at 9; AR, Tab 22, Proposal Analysis Report (Aug. 21, 2013) at 10. The contracting officer states that these details provided the agency with confidence that Dawson's proposed prices were fair and reasonable, and not unrealistically low. Contracting Officer's Statement at 9-10.

Next, with regard to proposed salaries, the agency concluded that Dawson's price was reasonable and realistic when compared with salaries and labor rates under relevant contracts for the same or similar support.⁴ Specifically the agency market research found that Dawson's price was reasonable and realistic when compared

⁴ FAR clause 52.222-46 requires an agency to evaluate the proposed compensation for "professional employees, as defined in 29 CFR 541." FAR § 52.222-46(a). For the record, the agency evaluated the realism of the compensation for all proposed labor categories, and did not appear to consider whether all positions required evaluation under FAR clause 52.222-46. See AR, Tab 20, Price Competition Memorandum, at 4.

with internal agency salaries for the same or similar support. Contracting Officer's Statement at 9; AR, Tab 20, Price Competition Memorandum (Aug. 14, 2013) at 3. The awardee's proposed labor rates were also reasonable and realistic when compared with the current rates for similar labor categories provided under the Air Force's Contracted Advisory and Assistance Services indefinite-delivery, indefinite quantity contract, which includes similar requirements. Contracting Officer's Statement at 9; AR, Tab 20, Price Competition Memorandum (Aug. 14, 2013) at 3.

Based on the record here, we find that the agency reasonably found that Dawson's proposed compensation was realistic. To the extent that the protester argues that the agency's judgment was unreasonable, the protester's disagreement provides no basis to sustain the protest. See Apptis Inc., supra, at 10 (concluding that agency's evaluation of the awardee's proposed recruitment and training plans, and its Federal Supply Schedule labor rates demonstrated that the proposed compensation plan was realistic); ENMAX Corp., B-281965, May 12, 1999, 99-1 CPD ¶ 102 at 10-11 (concluding that an agency's comparison of the awardee's proposed labor rates to rates compiled by Bureau of Labor Statistics was adequate to satisfy realism requirements of FAR § 52.222-46).

The protest is denied.

Susan A. Poling
General Counsel