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Decision

Matter of: Alamo City Engineering Services, Inc.

File: B-409072; B-409072.2

Date: January 16, 2014

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E. Sanderson Hoe, Esq., and J. Hunter Bennet, Esq., McKenna Long & Aldridge LLP, for the intervenor.
Michael Kraycinovich, Esq., Scott Johnson, Esq., Department of the Army, for the agency.
Christopher L. Krafchek, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the agency failed to conduct a price realism analysis in a fixed-price procurement is denied where the solicitation did not provide for a price realism analysis.
 2. Protest alleging that the awardee engaged in an improper bait and switch scheme regarding its proposed personnel is denied where the record does not demonstrate that the awardee knowingly or negligently represented that it would rely on specific personnel that it did not reasonably expect to furnish during contract performance.
 3. Protest that agency unreasonably failed to consider awardee's low price in finding the awardee responsible is denied where record does not show that the agency unreasonably ignored relevant available information.
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DECISION

Alamo City Engineering Services, Inc., of San Antonio, Texas, protests award of a task order to Mission 1st Group, Inc., of Princeton, New Jersey, by the Department of the Army, U.S. Army Materiel Command, under Request for Quotations (RFQ) No. W52P1J-13-T-0022, for information technology professional services. Alamo primarily argues that the Army failed to evaluate the realism of the vendors' proposed prices, conducted a flawed technical evaluation, and unreasonably

ignored Mission's proposed prices in finding the awardee responsible.

We deny the protest.

BACKGROUND

On August 8, 2013, the Army issued the RFQ for network and communications, engineering, and installation support. The competition was limited to vendors who hold contracts under the General Services Administration's Federal Supply Schedule No. 70. The RFQ stated that the vendor selected for award would be required to provide theater communications, networking infrastructure, and information technology subject matter experts in support of the Army Central Command and its subordinate command, the 335th Signal Command. RFQ, Attach. 1, Performance Work Statement (PWS), at 1. The RFQ advised prospective vendors that the services will be provided primarily in Afghanistan and Kuwait. Id.

The RFQ stated that award would be made to the lowest-priced quote that was found to be technically acceptable. RFQ, Attach. 7, Evaluation Factors, at 1. The RFQ stated that quotes would be ranked based on total proposed price. Id. If the lowest-price quote was found to be technically acceptable, the Army would conduct "a price analysis . . . to ensure price reasonableness." Id.

The technical factor consisted of four subfactors: (1) technical approach; (2) management approach; (3) experience; and (4) past performance. Id. at 2-5. The RFQ stated that each subfactor would be evaluated on an unacceptable or unacceptable basis, and that vendors must be found acceptable under all subfactors to receive an overall acceptable rating. Id. at 2.

As relevant here, the RFQ stated that the Army would evaluate all proposed key and non-key personnel, to ensure compliance with the stated minimum security clearances, education, experience, and certification requirements. Id. For key personnel, vendors were required to specifically identify by name each proposed individual and include a resume, disclosure statement, and letter of commitment. RFQ, Attach. 6, Instructions, at 3.

With regard to price, the RFQ stated that the agency would evaluate whether the total price was fair and reasonable. RFQ, Attach. 7, Evaluation Factors, at 1. The RFQ "strongly encouraged" vendors to provide discounts to their Federal Supply Schedule price lists. Id. The RFQ also advised prospective vendors that it would consider the correction potential of any quote uncertainty during the price analysis, as follows:

3. CORRECTION POTENTIAL OF QUOTES: The Government will consider, the "correction potential" of Volume II of any quote uncertainty during the price analysis completed on the Technically

Acceptable proposal. The judgment of such “correction potential” is within the sole discretion of the Government. If an aspect of a Quoter’s quote not meeting the Government’s requirements is not considered correctable, the Quoter may be eliminated. If upon completion of the price analysis, a correction is determined to be necessary and that correction results in a subsequent higher total price, the revised total price will be used for evaluation purposes. In this situation, if the quote is no longer considered to be the lowest price quote, the affected quote will be moved behind the “new” lowest price quote and the “new” lowest price quote will be evaluated for technical acceptability.

The Government does not accept responsibility for pricing errors proposed by the Quoter that may result in a higher than intended total price; therefore, it is incumbent upon the Quoters to ensure that all quotes are free of calculation errors.

Id. at 1-2.

The Army received quotes from nine vendors, including Mission and Alamo, by the September 9 closing date. Agency Report (AR), Tab 40, Source Selection Decision (SSD), at 1. Mission proposed the lowest evaluated price of \$19,899,206.¹ AR, Tab 38, Total Evaluated Price Chart, at 1. The Army found Mission’s quote technically acceptable, and also found that its price was fair and reasonable. AR, Tab 40, SSD, at 3.

On September 19, the contracting officer conducted a responsibility determination for Mission “due to the steep discounts offered by the [c]ontractor.” AR, Tab 39, Contracting Officer’s Responsibility Determination (Sept. 19, 2013), at 1. In making this determination, the contracting officer reviewed Mission’s: (1) financial resources; (2) ability to perform; (3) performance record; (4) integrity and business ethics; (5) organizational structure; (6) production capability; and (7) the contractor’s qualifications. Id. at 1-3. On September 24, the Army awarded the task order to Mission. This protest followed.

¹ Alamo’s proposed price was \$40,533,679. AR, Tab 38, Total Evaluated Price Chart, at 1. We note for the record that, in addition to Mission, three other vendors proposed a lower price than Alamo. Id. Because the Army found Mission’s low-priced quote technically acceptable, the agency did not evaluate any other vendor’s quote for technical acceptability or price reasonableness. AR at 5. In light of the fact that the agency did not evaluate the intervening vendors’ quotes, we conclude that the protester is an interested party to challenge the award to Mission.

DISCUSSION

Alamo argues that the Army's award to Mission was unreasonable because the agency failed to consider whether Mission's proposed price was realistic for its proposed technical approach. The protester also contends that the awardee engaged in an improper bait and switch scheme by proposing key personnel that it did not intend to provide. Finally, Alamo argues that the agency failed to consider the effect of Mission's proposed price on its ability to perform the contract, and therefore improperly found the awardee responsible. For the reasons discussed below, we find no basis to sustain the protest.

Price Realism

Alamo argues that the solicitation required the Army to evaluate the realism of the vendors' proposed prices. Alamo further argues that "there is nothing in the record that demonstrates the Army conducted a reasonable evaluation of [Mission's] technical quote in relation to its proposed price." Supp. Protest at 4-8. The protester contends that if the agency had properly considered the realism of Mission's proposed labor rates and incentive fees, it would have found the quote technically unacceptable. We find no merit to this argument.

As a general matter, when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. Where there is no evaluation factor providing for consideration of price realism, a determination that an offeror's price is too low generally concerns an offeror's or vendor's responsibility. See PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror's low price reflects a lack of technical understanding or risk, offerors must be advised that the agency will conduct such an analysis. See FAR § 15.404-1(d)(3); Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. Id.

As a threshold matter, the RFQ's price evaluation factor here makes no mention of a price realism evaluation. The RFQ's provision relating to the agency's evaluation of price provides, in pertinent part, "[t]he objective of the [price] evaluation is to determine the [Total Evaluated Price] to be fair and reasonable at the time of award." RFQ, Attach.7, Evaluation Factors, at 1. Nothing in the RFQ stated that the agency planned to evaluate proposed prices to determine whether they were so low that they reflected a lack of technical understanding, and nothing in the RFQ stated that the agency could reject a quote for offering unrealistically low prices.

We therefore find that the RFQ's price evaluation criteria contemplated the evaluation of price quotes for reasonableness, and not for realism.

Alamo nonetheless argues that the technical evaluation factors indicated that the Army would evaluate the vendor's technical quote in relation to the proposed price. In this regard, the protester notes that the agency would evaluate the "accuracy, clarity, completeness, reasonableness, and credibility" of a vendor's technical approach, including the ability to provide qualified personnel. Supp. Protest at 9-10, citing RFQ Attach. 7, Evaluation Factors, at 3. Alamo contends that these solicitation requirements obligated the agency to evaluate whether a vendor proposed an adequate price that reflected the ability to perform the solicitation requirements, such as providing the required personnel. We disagree.

As our Office has held, an agency may not evaluate an offeror's or vendor's proposed technical approach based on the realism of the proposed prices without expressly advising that such an evaluation will be performed. Milani Constr., LLC, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 5. We have recognized that where a solicitation does not expressly state that the agency will consider the realism of proposed prices, certain solicitation terms may trigger the obligation to conduct a price realism analysis. See Science Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 (holding that a solicitation required a price realism analysis where it stated that the agency would consider whether the proposed prices were "compatible" with the proposed effort). Here, the RFQ did not state that the agency would consider the vendors' proposed labor rates or incentive fees in evaluating the acceptability of a vendor's technical approach. Instead, as noted above, the RFQ's price evaluation provision indicated only that the quoted price would be evaluated to determine if it was "fair and reasonable at the time of award." RFQ, Attach. 7, Evaluation Factors, at 5.

Alamo also argues that the RFQ contained a clause concerning the "CORRECTION POTENTIAL OF QUOTES," which, as discussed above, indicated that the agency would consider whether a vendor's proposed price contained errors and make upward adjustments to the price as appropriate. See RFQ, Attach. 7, Evaluation Factors, at 1-2. Alamo focuses on the last sentence of the clause, which states: "If upon completion of the price analysis, a correction is determined to be necessary and that correction results in a subsequent higher total price, the revised total price will be used for evaluation purposes." Supp. Protest at 9-10, citing RFQ, Attach. 7, Evaluation Factors, at 2. In Alamo's view, this clause permitted the agency to upwardly adjust the vendor's evaluated price or reject the quote as unacceptable, which, the protester contends, is "the very hallmark of a realism analysis." Supp. Protest at 10. We find no merit to this argument.

To the extent the protester contends that the clause permitted the agency to make upward adjustments to a vendor's fixed price based on a realism analysis, such an adjustment is expressly prohibited by the FAR. See FAR § 15.404-1(d)(3);

IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 11. In any event, the provision cited by the protester concerns the assessment and correction of errors within the price quote itself, that is, the calculation of the total price. See RFQ, Attach. 7, Evaluation Factors, at 1-2. In sum, we find no basis to conclude that the agency was required to evaluate the realism of vendors' proposed prices.

Technical Acceptability--Bait and Switch Allegation

Next, Alamo contends that Mission's quote failed to comply with the staffing requirements of the RFQ. Specifically, the protester argues that the awardee engaged in an improper "bait and switch" scheme by proposing key personnel that it did not intend to provide during contract performance. We find no merit to these arguments.

The RFQ identified 22 key personnel, setting forth required technical qualifications, certifications, and minimum years of experience for each. RFQ, Attach. 1, PWS, at 35-36. As explained above, the RFQ required vendors to submit resumes and commitment letters for proposed key personnel. RFQ, Attach. 7, Evaluation Factors, at 1. Alamo alleges that, after the award, Mission began recruiting efforts for 28 positions identified in the RFQ, at least eight of which were key personnel positions. Protest at 25. Additionally, Alamo alleges that Mission is currently performing with key personnel that were not included in its quote, which demonstrates that Mission's quote either intentionally or negligently misled the Army's evaluators.

An offeror or vendor may not propose to use specific personnel that it does not expect to use during contract performance, as doing so would have an adverse effect on the integrity of the competitive procurement system. AdapTech Gen. Scientific, LLC, B-293867, June 4, 2004, 2004 CPD ¶ 126 at 5. To establish an improper bait and switch scheme, a protester must show a firm either knowingly or negligently represented that it would rely on specific personnel that it did not reasonably expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Data Mgmt. Servs. JV, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10.

Here, we find that Alamo's protest furnishes no basis to conclude that Mission either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance. See AdapTech Gen. Scientific, LLC, supra. Alamo points to nothing in the record indicating that any of the named key personnel were unavailable, unwilling, or unlikely to perform under the contract as Mission employees. Instead, as required by the RFQ, Mission's quote included named resumes and consent letters for all 22 proposed key

personnel, and signed commitment letters for all of the non-employees named in the quote.² AR, Tab 8, Mission's Technical Quote, Attach. 4, Consent Letters.

With regard to Mission's post-award recruiting efforts, we do not find the record here demonstrates that the awardee's quote was based on an improper bait and switch scheme. As the agency notes, the RFQ contemplated that the successful vendor might have to replace personnel and recruit incumbent employees. RFQ, Attach. 2, Clause Addendum, at 6. Accordingly, the mere fact that Mission is currently seeking to hire additional qualified personnel to meet the needs of the RFQ does not demonstrate that the agency improperly found its quote technically acceptable. Moreover, to the extent that the agency has permitted Mission to replace key personnel after award, this is a matter of contract administration, which our Office does not review.³ See 4 C.F.R. 21.5(a) (2013); United Concordia Cos., Inc., B-404740, April 27, 2011, 2011 CPD ¶ 97 at 6.

Additionally, while the advertisements cited by Alamo use labor category descriptions identical or virtually identical to that used in the RFQ, they provide no guarantee that any prospective employee would be considered for any particular position or even employment on any particular contract. We further note that, in its quote, Mission specifically indicated that it would continue to engage in ongoing efforts to recruit qualified employees as part of its plan to have a "warm bench"

² Alamo also argues that Mission failed to submit commitment letters for its current employees. The agency responds that the RFQ did not require vendors to include commitment letters for current employees. Our review of the RFQ, however, shows that the solicitation did not make a distinction between current and prospective personnel for this requirement, and we therefore see no basis for the agency's response. See RFQ, Attach. 6, Instructions, at 3. Nonetheless, the Army states, and the protester does not dispute, that Alamo did not include commitment letters for prospective personnel proposed as key in its quote and, therefore, the agency's apparent evaluation error does not cause Alamo competitive prejudice. Supp. AR at 11. Our Office 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. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

³ As a related matter, Alamo challenges the qualifications of four personnel currently working for Mission, arguing that they do not satisfy the RFQ's requirements for key personnel. To the extent the protester argues that the agency has permitted the awardee to substitute personnel who do not meet the solicitation requirements, this is also a matter of contract administration that our Office does not review. 4 C.F.R. § 21.5(a); see Ceradyne, Inc., B-402281, Feb. 17, 2010, 2010 CPD ¶ 70 at 3 n.4 (arguments concerning a breach of a contractual term are matters of contract administration that GAO does not review).

should the need arrive to replace qualified employees. AR, Tab 6, Mission's Technical Quote, Attach. 2, Key Personnel, at 1. We agree with the agency that these recruiting efforts do not demonstrate that Mission either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance. See Veda Inc., B-278516.2, Mar. 19, 1998, 98-1 CPD ¶ 112 at 16-17. For these reasons, we find no basis to sustain the protest.

Affirmative Determination of Responsibility

Finally, Alamo challenges the contracting officer's affirmative determination of Mission's responsibility. The protester contends that the contracting officer failed to consider available relevant information in determining that Mission had the financial resources to perform the contract.

Contracts may only be awarded to responsible prospective contractors. FAR § 9.103(a). In making a responsibility determination, the contracting officer must determine, among other things, that the contractor has "adequate financial resources to perform the contract, or the ability to obtain them." FAR § 9.104-1(a). In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer must find the offeror nonresponsible. FAR § 9.103(b). Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office will generally not consider a protest challenging such a determination. Bid Protest Regulations, 4 C.F.R. § 21.5(c). One of the circumstances in which we will make an exception to the general rule is where a protest identifies evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information. Id.; Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 3. This exception was intended to encompass protests raising supported allegations that the contracting officer had ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 14.

Alamo argues that the contracting officer here either ignored or unreasonably failed to consider the impact of Mission's labor rates and incentive fee upon the awardee's ability to provide a qualified workforce. Supp. Protest at 34-37. This argument is merely another facet of the protester's interpretation that the RFQ required the agency to conduct a price realism evaluation. As discussed above, we find that the solicitation did not require such an evaluation. In any event, the record shows the contracting officer specifically considered Mission's price in [his] responsibility determination. See AR, Tab 39, Contracting Officer's Responsibility Determination, at 1. In this regard, the contracting officer specifically explained that Mission's proposed price was lower because "Mission 1st chose to quote its labor rates with

no indirect costs and no fee, which resulted in quoted Fixed Labor Rates that are comparable to Mission 1st's Direct Labor Rates or unloaded labor rates." Id. at 2. Because Alamo does not demonstrate that the contracting officer failed to consider available relevant information, this protest argument does not provide an exception to the general rule that our Office does not review affirmative determinations of contractor reasonability. See USS Chartering, LLC, B-407601, Jan. 15, 2013, 2013 CPD ¶ 69 at 4.

The protest is denied.

Susan A. Poling
General Counsel