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Decision

Matter of: DNO Inc.
File: B-409539
Date: May 27, 2014

Anne B. Perry, Esq., Sheppard Mullin Richter & Hampton LLP, for the protester.
Michael D. Delaney, Esq., Defense Logistics Agency, for the agency.
Gary R. Allen, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's price and technical evaluation is denied where the price evaluation was consistent with the solicitation criteria and the awardee's proposal did not deviate from a technical requirement in the solicitation.

DECISION

DNO Inc., of Columbus, Ohio, protests the award of a contract to Produce One, Inc., of Dayton, Ohio, under solicitation No. SPE300-13-R-1029, issued by the Department of Defense, Defense Logistics Agency, for fresh fruit and vegetable products for non-Department of Defense customers in Ohio, Western Pennsylvania, and West Virginia. DNO challenges the evaluation of the awardee's price proposal and contends that the agency waived a material solicitation requirement for the sole benefit of the awardee.

We deny the protest.

BACKGROUND

The solicitation, issued as a small business set-aside, contemplated the award of a fixed-price, indefinite-quantity contract with an applicable economic price adjustment clause for the supply of a full-line of USDA No. 1 or better fresh fruit and vegetable products. Solicitation, attach. 2, at 4. The duration of the contract was 4.5 years, including an 18-month base period and two 18-month option periods, and the estimated contract value was \$18 million. Id. at 4-5.

The solicitation provided that award of the contract would be made on a lowest-priced, technically-acceptable basis. Solicitation at 7. With regard to price, the solicitation stated that the agency would perform an “aggregate price analysis” to determine if prices were fair and reasonable. Id. To facilitate the price evaluation, the solicitation contained a schedule of items with estimated quantities. Offerors were required to submit unit prices for each item; each unit price was to include both a “delivered price”¹ and “distribution price.”² The agency explained that the contract unit price would be determined by the sum of the delivered and distribution prices. Id., attach. 2, at 32. As part of the evaluation, all of the unit prices were to be “comparatively assessed to identify any unusually high or low priced items.” Id. at 33.

The agency received three offers by the September 16, 2013 closing date, including offers from DNO and Produce One. Contracting Officer’s (CO) Statement at 4. The agency determined all three offers to be technically acceptable, and it conducted a price evaluation. As relevant here, the total evaluated aggregate price (base and option periods) for DNO and Produce One were as follows:

Offeror	Total Evaluated Aggregate Price
Produce One	\$8,740,095.96
DNO	\$8,933,974.32

Agency Report (AR), Tab 4, Price Negotiation Memorandum (PNM), at 6.

In evaluating the reasonableness of the offerors’ aggregate prices, the agency considered both offerors’ proposed delivered prices and distribution prices. It compared offerors’ unit prices to each other and to a government-compiled pricing

¹ The delivered price was defined as the most recent manufacturer, grower, or private label commercial price per unit to the contractor, inclusive of standard freight. Solicitation, attach. 1, at 9. The delivered price was subject to an economic price adjustment. Id. at 10. Because these prices were not fixed, for evaluation purposes, the solicitation advised that the government “reserved the right” to ask the offeror to substantiate its proposed delivered price with an invoice, or a quote if an invoice was not available. Solicitation, attach. 2, at 33.

² The distribution price was defined as the fixed-price portion of the contract unit price, offered as a dollar amount per unit of issue, rounded up or down to the nearest cent. Solicitation, attach. 1, at 10. The distribution price was not subject to an economic price adjustment. Id.

database called the “price deviation tool” to identify pricing outliers.³ Where outliers were identified, the agency requested that offerors substantiate their proposed delivered prices with invoices or quotes as contemplated by the solicitation. The CO reviewed the invoices and quotes to ensure that they met the solicitation requirements. The CO then randomly selected three quotes from each offeror, and called the grower/manufacturer that produced each quote to verify its accuracy. As a result of this analysis, all prices were deemed fair and reasonable. AR, Tab 4, PNM, at 6-8; CO Statement at 3-5; CO Supp. Statement at 3.

The contracting officer made award to Produce One as the lowest-priced, technically-acceptable offeror on February 6, 2014. This protest followed.

DISCUSSION

DNO challenges the agency’s evaluation of the offerors’ price proposals and argues that Produce One’s proposal should have been found to be technically unacceptable. Although we discuss only certain representative examples of the arguments raised by the protester, we have reviewed each of the arguments, and find no basis to sustain the protest.

DNO contends that Produce One’s delivered prices were unrealistically low, and that the agency failed to perform a comparative assessment of the offerors’ proposed delivered prices to determine their reasonableness, as required by the solicitation. Protest at 8-9. DNO also asserts that the agency’s assessment was unreasonable because the agency only considered a “fraction” of the items listed in the solicitation and did not substantiate a sufficient number of items. Comments at 5-6, 8.

The manner and depth of an agency’s price analysis is a matter within the sound exercise of the agency’s discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Gentex Corp.--Western Operations, B-291793 et al., Mar. 25, 2003, 2003 CPD ¶ 66 at 21. In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations. Id. A protester’s mere disagreement with the evaluation does not show it lacked a reasonable basis. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. Our review of this record provides no basis to question the reasonableness of the agency’s evaluation.

³ The agency identified 14 outliers in Produce One’s pricing and 12 outliers in DNO’s pricing. CO Supp. Statement at 3.

Here, the solicitation generally provided for a determination of the fairness and reasonableness of the offerors' prices, and it stated that the agency would analyze prices to identify unusually high or low priced items by comparatively assessing them. Solicitation, attach. 2, at 32-33. The CO analyzed all of the offerors' prices by comparing the proposals to each other to identify those prices that were unusually high or low, as required by the solicitation, and the CO also used the price deviation tool to assist in identifying outlier prices. CO Statement at 3; CO Supp. Statement at 3. With respect to the outlier prices, the CO requested that each offeror substantiate those prices with invoices or quotes. AR, Tab 4, PNM, at 7. The CO reviewed the invoices and quotes, then further verified the pricing by randomly selecting three quotes from each offeror and contacting the appropriate manufacturer/grower. AR, Tab 3, Decl. of Contract Specialist. Although DNO argues that the agency should have substantiated more of the prices, the protester has not demonstrated that additional actions were required by the solicitation. Rather, we conclude that the agency's analysis was reasonable and consistent with the evaluation criteria set forth in the solicitation.

DNO also contends that Produce One should have been deemed technically unacceptable for failing to meet a material solicitation requirement and that the agency waived this requirement for Produce One only. Comments at 3. DNO specifically argues that Produce One's proposal takes exception to the solicitation requirement to supply only "USDA No. 1 or better Fresh Fruit and Vegetable (FF&V) products" by stating that the firm "will make a conscientious effort" to do so. Comments at 3 (quoting AR, Tab 17, Produce One Proposal, at 6).

DNO misreads Produce One's proposal. The solicitation states that the government prefers locally grown produce when USDA No. 1 or better quality produce is seasonally available. Solicitation, attach. 2, at 29. In a section of the proposal titled, "Seasonal Acquisition Plan," Produce One states that it "will make a conscientious effort to supply preferred . . . local produce. AR, Tab 17, Produce One Proposal, at 6. The proposal does not take exception to providing USDA No. 1 or better produce, as the protester contends. Rather, the proposal states that the produce will be "in conformance with the USDA" and "meet USDA standards." Id. at 1, 16. Accordingly, we deny this protest ground.

The protest is denied.

Susan A. Poling
General Counsel