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Decision

Matter of: Sea Box, Inc.

File: B-410220

Date: November 17, 2014

Pamela J. Mazza, Esq., Kathryn V. Flood, Esq., Peter B. Ford, Esq., Megan C. Connor, Esq. and Brian F. Wilbourn, Esq., PilieroMazza PLLC, for the protester. Michael J. Kraycinovich, Esq., and Russell W. Bottom, Esq., U.S. Army Materiel Command, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of technical evaluation is denied where record shows that it was reasonable and consistent with the terms of the solicitation.
 2. Under solicitation contemplating award of fixed-price contract, protest challenging agency's price realism analysis is denied where the record reflects that the agency evaluated the underlying cost elements of the awardee's lower price and the protester has not shown that the agency's consideration of this information was unreasonable.
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DECISION

Sea Box, Inc., of East Riverton, New Jersey, protests the award of a contract to Berg Manufacturing, Inc., of Spokane, Washington, by the Department of the Army under request for proposals (RFP) No. W90985-14-R-0002 for metal working and machining shop set (MWMSS) shelters. Sea Box contends that the agency's evaluation of the awardee's proposal was improper.

We deny the protest.

BACKGROUND

The RFP, a small business set-aside issued on January 31, 2014, anticipated the award of a 5-year indefinite-delivery, indefinite-quantity contract for 1-sided expandable shelters. RFP at 2-3. The contract was to be awarded on a fixed-price

basis, with associated field support services awarded on a cost-reimbursable basis. Id. at 29-30. As set forth in the solicitation, the agency required the contractor to provide International Standards Organization (ISO) compliant shelters manufactured in accordance with a comprehensive data package provided in the RFP; additionally, all shelters, when delivered, were to be accompanied by a certification of conformance. Id. at 2, 5, 7.

Offerors were advised that award was to be made on a lowest-price, technically acceptable basis. Id. at 30. Technical acceptability was to be evaluated under two factors: (1) delivery plan (acceptable where the offeror demonstrates the ability to deliver at a rate of 8 shelters per month beginning 7 months after contract award); and (2) experience (acceptable where, for work done within the prior 3 years, the offeror demonstrates successful, timely completion of two projects of similar scope and scale, to include the manufacture, supply or offer for sale of 1- or 2-sided expandable shelters with a gross weight capacity in excess of 26,000 pounds). Id. at 26-27, 31. The RFP also indicated that technically acceptable proposals would be evaluated for price reasonableness, unbalancing, and realism. Id. at 30-31. The RFP further advised that proposals determined to be unrealistically priced were to be judged as either exhibiting a lack of competence or the failure to comprehend the requirements. Id. at 30.

The agency received two proposals in response to the RFP, including Berg's (with a total evaluated price of \$22,338,770.93) and Sea Box's (with a total evaluated price of [deleted]). Agency Report at 2. After discussions, both firms provided cost and pricing data; Berg also confirmed the accuracy of its low price. Id. Both firms' proposals were considered technically acceptable. Id. Based on its submission of the lowest price among the technically acceptable proposals, the agency made award to Berg. Id.; Source Selection Decision Document at 10. This protest followed.

DISCUSSION

Sea Box contends that the agency should have evaluated Berg's proposal as technically unacceptable because the awardee allegedly will not deliver shelters that are ISO-certified. In this regard, Sea Box argues that while Berg's initial container may be ISO-certified, anticipated container modifications to be performed by Berg will void that certification. Thus, the protester suggests that the shelters will have to be recertified prior to delivery. Sea Box also generally suggests that Berg's proposal should have been rejected because modifications made by Berg will so weaken the container's structure that it will be unable to meet the required payload capacity or perform its function as a shelter.¹

¹ Initially, Sea Box also contended that Berg lacked experience manufacturing similar expandable shelters, however, in its comments, the firm instead generally
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The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing an agency's evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Sea Box provides no basis for us to question the agency's evaluation of the Berg proposal's technical acceptability. The protester's challenges to the evaluation of Berg's shelters' compliance with the ISO-certification and payload capacity requirements fail since the RFP did not provide for the evaluation of these requirements. Rather, the evaluation criteria were limited to a consideration of the offeror's delivery plan and experience manufacturing and supplying similar items.² As the agency correctly points out, whether Berg will successfully deliver the containers required by the contract involves a matter of contract administration, which is not for our review.³ Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2014); see Dube Travel Agency & Tours, Inc.; Garber Travel, B-270438, B-270438.2, Mar. 6, 1996, 96-1 CPD ¶ 141 at 5; ARINC Eng'g Servs., LLC, B-403471.2, Nov. 5, 2010, 2010 CPD ¶ 270 at 5.

Sea Box next generally contends that the agency failed to perform an adequate price realism analysis of Berg's low proposed price. In this regard, the protester generally alleges that the agency should have found that Berg's substantially lower

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alleges that the agency should not have taken at "face value" the awardee's report of its past delivery of ISO-certified shelters. Sea Box's speculation about the accuracy of the proposal information in this regard--without sufficient factual support to question the information provided by Berg for its past contracts--fails to constitute a valid basis of protest. 4 C.F.R. § 21.5(f); Comments at 3.

² Contrary to the protester's contentions, the RFP contained no evaluation requirement that offerors demonstrate in their proposals that the proposed shelters will be TDP and ISO compliant upon delivery. See generally RFP at 30-31.

³ To the extent Sea Box suggests that Berg lacks the ability to manufacture shelters meeting the RFP payload requirements, such an allegation concerns a matter of the Berg's responsibility, which is not for our review except under circumstances not present here. 4 C.F.R. § 21.5(c); see Bannum, Inc., B-409831, July 30, 2014, 2014 CPD ¶ 232 at 5-6.

price indicated there was performance risk such that Berg did not understand the agency's requirements.⁴

While agencies are required to perform some sort of price analysis or cost analysis on negotiated contracts to ensure that the agreed-upon price is fair and reasonable, where the award of 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 and resulting profit or loss on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. An agency, however, may provide for a price realism analysis in a solicitation to measure an offeror's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide services at little or no profit. See 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 price realism analysis are matters within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 5.

The record reflects that the agency evaluated Berg's proposed price for realism not only by comparison to the agency's cost estimate (which was below Sea Box's price), but also through a comprehensive review of Berg's material, direct labor, indirect support costs, shipping, general and administrative costs, and profit. Based on its consideration of this information, the agency concluded that the documentation provided by Berg substantiated its price. Given the agency's consideration of the detailed elements underlying Berg's comparatively low price, and the protester's failure to address how the agency's evaluation of this information was flawed, we have no basis to question the reasonableness of the agency's price realism evaluation. See Mil-Mar Century Corp., B-407644 et al., Jan. 17, 2013 CPD ¶ 39 at 10-11 (price realism evaluation of awardee's significantly

⁴ To the extent the protester contends, in essence, that the awardee's price may not account for all manufacturing costs and be too low, the protester provides no support for the contention, and the allegation does not present a valid basis of protest. An offeror, in its business judgment, properly may decide to submit a price that is extremely low or below-cost. See Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4.

lower price was reasonably based on consideration of underlying cost elements, which formed basis of awardee's low price).

The protest is denied.

Susan A. Poling
General Counsel