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United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Gulf Master General Trading, LLC

File: B-407941.2

Date: July 15, 2013

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Kelly E. Buroker, Esq., Kevin P. Connelly, Esq., Vedder Price PC, for Abu Dhabi Supplies and Commercial Services, the intervenor.
Christopher S. Cole, Esq., Department of the Air Force, for the agency.
Brent Burris, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected proposal due to unbalanced pricing is denied where agency reasonably determined that the protester's prices were unbalanced and that the unbalanced pricing posed an unacceptable risk to the government.

DECISION

Gulf Master General Trading, LLC (Gulf Master) protests the rejection of its proposal under Solicitation No. FA5706-12-R-0030, issued by the United States Air Force for vehicle leasing services at Al Dhafra Air Base in the United Arab Emirates. Gulf Master contends that the agency unreasonably determined that its proposed pricing was unbalanced.

We deny the protest.

BACKGROUND

The solicitation, issued on November 22, 2012, anticipated the award of a single indefinite-delivery/indefinite-quantity (IDIQ) contract with a 1-year base period of performance, and four 1-year option periods. Agency Report (AR), Exhibit (Exh.) 2, Contracting Officer's Statement of Facts (CO Statement), at 1-2. Offerors were required to submit contract line item (CLIN) prices for 20 different types of vehicles for each year of the contract based on the estimated number of vehicles provided in the RFP. RFP at 3-52. The estimated quantities for the vehicles largely remain constant between the base and option periods, with the exception of a slight increase in vehicle quantities for option years 3 and 4. Award was to be made to the offeror with the lowest-priced, technically acceptable proposal.

Regarding price, the RFP established that the agency would calculate a total price for each offeror by summing proposed prices for all CLINs for the base and four option years.[1] Id. at 102-03. According to the RFP, offerors' price proposals would be evaluated using the techniques established in Federal Acquisition Regulation (FAR) § 15.404-1 "to ensure the Government receives a fair, reasonable, and balanced price." Id.

The agency received several proposals by the closing date established by the RFP. Three proposals were found to be technically acceptable, including those of the protester and Abu Dhabi Supplies and Commercial Services (ASCS), the incumbent contractor. AR, Exh. 17, Unbalanced Pricing Report, at 1. On January 6, 2013, the Air Force made award to Gulf Master, which had the lowest total evaluated price. AR, Exh. 2, CO Statement at 3. On January 14, 2013, ASCS, the next lowest-priced offeror, filed a protest with our Office, challenging the Air Force's decision to award the contract to Gulf Master. Id. at 3-4. ASCS argued that Gulf Master's pricing was unbalanced, and that the agency failed to consider the risk posed by the unbalancing as required by FAR § 15.404-1. In response to the ASCS protest, the Air Force notified our Office that it was taking corrective action, to include a reevaluation of the Gulf Master's price proposal. We dismissed the protest as academic. Abu Dhabi Supplies & Commercial Services, B-407941, Jan. 30, 2013.

In taking corrective action, the record reflects that the Air Force reevaluated Gulf Master's prices for balance, focusing on the balance between Gulf Master's base-year and option year prices. Id. As a general matter, the Air Force compared Gulf Master's prices to those of the independent government estimate (IGE), and the prices of ASCS and the other technically acceptable offeror. AR, Exh. 17, Unbalanced Pricing Report. The Air Force also assessed the year-to-year change within Gulf Master's price proposal. Id. In conducting its analysis, the Air Force found that the protester proposed substantially higher prices for the base period of the contract and significantly lower prices for the last two option years of the contract. Id.

More specifically, the agency's analysis showed that the protester's average CLIN price for the base period was [deleted]% above the IGE, whereas ASCS and the third offeror's prices for the base period were only [deleted]% and [deleted]%

[1] Each vehicle type was represented by a separate CLIN in each year of the contract.

higher, respectively. Id. at 1-2. In option year 3, however, when the estimated quantities for the CLIN items actually increases, the protester's average CLIN price dropped to [deleted]% below the IGE. Id. By comparison, ASCS's CLIN pricing [deleted] the contract and the third offeror's average CLIN price decreased in option year 3 to [deleted]% below the IGE. Id. In option year 4, Gulf Master's average CLIN price dropped to [deleted]% below the IGE whereas the average CLIN price for the other two offerors remained constant. Id.

The above analysis is reflected in the agency's chart below:

Percentage Difference in Average CLIN Price as Compared to IGE

Year	Gulf Master	ASCS	Third Offeror
Base Period	+[deleted]%	+[deleted]%	+[deleted]%
Option Year 1	+[deleted]%	+[deleted]%	+[deleted]%
Option Year 2	+[deleted]%	+[deleted]%	+[deleted]%
Option Year 3	-[deleted]%	+[deleted]%	-[deleted]%
Option Year 4	-[deleted]%	+[deleted]%	-[deleted]%

Id.

The Air Force also noted that Gulf Master's prices for the individual CLINs decreased substantially over the life of the contract. As compared to the base period, Gulf Master's first option year prices decreased for 19 of the 20 CLINs, with an average decrease of 17.2%. Id. at 4, 10-11. In option year 3 Gulf Master's prices decreased for all CLINs, with each CLIN declining by at least 38.5% relative to the prior year and an average decrease of 57.3% relative to the base year. Id. As discussed above, ASCS's CLIN pricing [deleted]. The third offeror dropped its prices for all CLINs in option year 3, with an average decrease in CLIN price of [deleted]%, and then held CLIN prices steady in option year four. Id.

The agency's chart reflecting the above analysis is set forth below:

Average Cumulative Variation in CLIN Price Relative to Base Period

Year	Gulf Master	ASCS	Third Offeror
Base Period	--	--	--
Option Year 1	-17.2%	[deleted]%	0.0%
Option Year 2	-17.9%	[deleted]%	0.0%
Option Year 3	-57.3%	[deleted]%	[deleted]%
Option Year 4	-60.2%	[deleted]%	[deleted]%

Id.

Based on its price analysis, which included the above findings as well as similar analyses conducted on a CLIN-by-CLIN basis, the Air Force concluded that Gulf Master's proposed prices were unbalanced.

After finding Gulf Master's pricing unbalanced, the Air Force assessed the risks associated with the protester's proposed pricing. AR, Exh. 21, Risk Analysis Report, at 1. Among the findings in the agency's risk report, the agency noted that Gulf Master's proposal only became the lowest in price in the final month of the final option year. In the agency's view, this created a significant risk that Gulf Master's proposal would not result in the lowest cost to the government in the event that it did not exercise all option years or the contract was terminated. Id. at 2.

The Air Force also found that this risk was exacerbated by the substantial difference between Gulf Master's and ASCS's prices for the first three years of the contract. Id. The risk analysis report indicated that if the contract were ended after the base year, the Air Force would pay $[deleted] more under Gulf Master's proposed pricing as compared to ASCS. Id. at 1. If the contract was terminated after option year 1, Gulf Master's proposal would cost the Air Force $[deleted] more than ASCS' proposal, and if terminated at the end of option year 2, the figure increased to $[deleted]. Id. Based on these price differences, the Air Force found that there was a risk that the government would pay unreasonably high prices with an award to Gulf Master. Id.

As a result of this analysis, the Air Force terminated Gulf Master's contract and eliminated its proposal from further consideration. Upon learning of the agency's decision, Gulf Master filed a timely protest with our Office.

DISCUSSION

Gulf Master argues that the agency unreasonably rejected its proposal as unbalanced where its pricing reflects its underlying cost structure, which differs from that of the incumbent, ASCS. Id. As discussed below, the protester's arguments are misplaced and without merit.

As a general matter, unbalanced pricing may increase risk to the government and can result in payment of unreasonably high prices. FAR § 15.404-1(g); Semont Travel, Inc., B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3. Unbalanced pricing exists where, despite a proposal's low overall price, individual line item prices are either understated or overstated, as indicated by the application of cost or price analysis techniques. FAR § 15.404-1(g); Semont Travel, Inc., supra. The risks of unbalanced pricing can occur in several contexts, to include instances where a solicitation establishes base quantities and option quantities as separate line items, as in this case. FAR § 15.404-1(g)(1). Where the level of service for each period is essentially the same, a large price differential between the base and option periods, or between one option period and another, is prima facie evidence of unbalancing. See, e.g., Technology Services International, Inc., B-278050, Nov. 25, 1997, 97-2 CPD ¶ 152 at 2.

Agencies are not, however, required to reject an offer solely because it is unbalanced. FAR § 15.404-1(g)(3). Rather, where an unbalanced offer is received, the contracting officer is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, including the risk that the unbalancing will result in unreasonably high prices for contract performance. FAR § 15.404-1(g)(2). An offer may be properly rejected if the contracting officer determines that the lack of balanced pricing poses an unacceptable risk to the government. Id.; L. W. Matteson, Inc., B-290224, May 28, 2002, 2002 CPD ¶ 89 at 3. Our Office will review for reasonableness both an agency's determination as to whether an offeror's prices are unbalanced, and an agency's determination as to whether an offeror's unbalanced prices pose an unacceptable risk to the government. See L. W. Matteson, Inc., supra, at 4; Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 2 n.1.

As noted above, Gulf Master contends that its pricing is not in fact unbalanced since it reasonably reflects its actual costs. In this regard, the protester explains that its relatively high base year prices are a result of start-up costs not incurred by the incumbent--ASCS. Protester's Comments at 4-9. Likewise, Gulf Master explains that it uses the proceeds from the sale of vehicles after the second option year of the contract to reduce the prices it charges the government in the final two years of the contract. Id. at 9. Although ASCS disputes the rationale underlying Gulf Master's claims regarding its costs, we need not resolve these issues. As discussed below, the Agency was not required to consider the protester's actual costs in conducting its unbalanced pricing analysis.

Unbalanced pricing is determined "by the application of cost or price analysis techniques." FAR § 15.404-1(g)(1) (emphasis added). Accordingly, the type of analysis used--cost or price--is within the agency's discretion. In this instance, the Air Force used several price analysis techniques identified in the FAR to assess Gulf Master's prices for balance. Specifically, the agency compared the protester's proposed pricing to the prices of other vendors and the IGE, and considered the year-to-year pricing change of CLINs within the protester's proposal for essentially the same services. See FAR § 15.404-1(b); cf. HMR Tech, LLC, B-295968, B-295968.2, May 19, 2005, 2005 CPD ¶ 101 (explaining that "The [FAR] provides a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including comparison of the prices received with each other; comparison of previously proposed prices for the same or similar items; comparison with the independent government estimate; and analysis of pricing information provided by the offeror."). Because a price analysis, by its nature, does not involve a consideration of the separate cost elements and proposed profit underlying a proposed price, see FAR § 15.404-1(b), information about the protester's actual costs were not relevant considerations.

The protester's contention that prices should not be found unbalanced if an offeror has legitimate cost-based reasons to justify higher prices earlier in contract performance appears to be based on older decisions by this Office, issued when the FAR's guidance regarding unbalanced pricing was materially different. For example, in its comments on the agency's report, the protester cites our decision in Eastex Maritime, Inc., B-256164, May 19, 1994, 94-1 CPD ¶ 340, which indicated that the "determinative question in assessing mathematical unbalancing is whether the pricing structure is reasonably related to the actual costs to be incurred in each year of the contract." Protester's Comments at 4. This decision, however, was issued at a time when the FAR suggested a cost-based unbalancing analysis. In relevant part, the FAR indicated a price "is mathematically unbalanced if it is based on prices which are significantly less than cost for some contract line items and significantly overstated in relation to cost for others." FAR § 15.814(b) (FAC 90-44) Dec. 31, 1996 (emphasis added). This language, however, was removed from the FAR's section on unbalanced pricing in 1997. See Part 15 Rewrite, 62 FR 51224, 51243 (Sept. 30, 1997).

Further, we have no basis to question the reasonableness of the agency's conclusion that Gulf Master's pricing was unbalanced. The FAR provides that prices are unbalanced if they are "significantly over or understated." FAR § 15.404-1(g)(1). In order for prices to be considered over or understated, they must necessarily be compared to some relevant baseline. As discussed above, the Air Force found that Gulf Master's base year prices were significantly overstated when compared to the prices of the other offerors and the IGE. AR, Exh. 17, Unbalanced Pricing Report, at 1-5. Likewise, Gulf Master's prices for each of the 20 vehicle types were significantly higher in the base year than its prices for the same types of vehicles in the last two years of the contract. Id. at 10-11. As previously indicated, where the level of service for each period is essentially the same, as was the case under this solicitation, a large price differential between the base and option periods, or between one option period and another, is prima facie evidence of unbalancing.[2]

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[2] After finding Gulf Master's prices "mathematically unbalanced", the Air Force found that the prices were also "materially unbalanced", stating that there "was reasonable doubt that the proposal would actually result in the lowest cost to the Government" and that Gulf Master's proposal "was so grossly unbalanced that its acceptance would be tantamount to allowing an advanced payment." AR, Exh. 17, Unbalanced Pricing Report, at 5-6. The phrase "materially unbalanced" pricing was removed from the FAR's unbalanced price analysis in 1997. See Part 15 Rewrite, 62 FR 51224, 51243 (Sept. 30, 1997). Moreover, the current version of the FAR no longer provides for rejection of unbalanced bids where acceptance would be tantamount to an advance payment, and instead requires the agency to perform a risk analysis. JND Thomas Co., Inc., B-402240, Jan. 28, 2010, 2010 CPD ¶ 40 at 4 n.2.

We also have no basis to question the reasonableness of the Air Force's conclusion that the protester's unbalanced pricing posed an unacceptable risk to the government. The Air Force found that the next-lowest-priced offeror, which offered [deleted], had a lower price than Gulf Master through the second to last month of the final option year. AR, Exh. 21, Risk Analysis Report, at 2. Thus, the Air Force reasonably found that Gulf Master's proposal might not actually result in the lowest cost if any of the option years were not exercised, or if the contract was terminated before the end of the final option year. Id. Further, the agency found that the difference in prices between ASCS and Gulf Master was such that if the contract did not continue beyond the second option year, it would pay substantially more under Gulf Master's pricing than under ASCS's pricing. Id. at 1-2. This substantial price disparity supports the reasonableness of the Air Force's conclusion that Gulf Master's unbalanced pricing posed an unacceptable risk that it would pay unreasonably high prices for contract performance if some of the options were not exercised.[3] Id.; see DGS Contract Services, Inc., B-250306, Jan. 15, 1993, 93-1 CPD ¶ 49 at 3 (denying protest that agency improperly rejected bid under unbalanced pricing analysis when it did not become low until the eleventh month of the last option year).

Finally, Gulf Master argues that the Agency's preference for a [deleted] structure, which the protester contends only the incumbent can propose, is unreasonable and constitutes an irrational preference for one business model over another. Protester's Comments to Intervenor's Response, at 8. To the contrary, it was entirely rational for the agency to avoid an unacceptable level of risk that it will pay more than the market value of the services it receives. As discussed above, FAR 15.404-1(g) provides the mechanism by which an agency can avoid such risks.

[3] Although the agency's risk analysis report does not emphasize the point, the total evaluated price of ASCS's proposal was less than [deleted]% higher than Gulf Master's total price. See AR, Exh. 21, Risk Analysis Report, at 2. We believe this further supports the reasonableness of the agency's risk determination, given that the risks associated with Gulf Master's pricing were being weighed against the benefit of minimal cost savings.

While Gulf Master contends its pricing structure is a "sound and logical way" for it to offer lower prices to the government, the company's pricing structure also posed risks to the government that the Air Force reasonably concluded were unacceptable.[4]

The protest is denied.

Susan A. Poling
General Counsel

[4] To the extent Gulf Master contends that its pricing was not unbalanced because other agencies have accepted a similar pricing structure in similar procurements, this argument is not relevant as each procurement action stands on its own. See Westbrook Industries, Inc., B-245019.2, Jan. 7, 1992, 92-1 CPD ¶ 3 at 3 (protester's contention that the Army had accepted its bid containing a similar pricing methodology under previous procurements was not relevant "since each procurement is a separate transaction and agency action under one procurement does not affect the propriety of the agency's action under a different procurement.").