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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Mindleaf Technologies, Inc.

File: B-294242, B-294242.2

Date: August 24, 2004

Paresh K. Shah for the protester.

Clarence D. Long III, Esq., and Capt. David W. Armstrong, Department of the Air Force, for the agency.

Paul F. Khoury, Esq., and William J. Grimaldi, Esq., Wiley Rein & Fielding, for KMR, LLC, an intervenor.

Matthew T. Crosby and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that awardee's proposal price was not unrealistically low where awardee's price was in line with the prices of two other competitive proposals.

DECISION

Mindleaf Technologies, Inc. protests the award of a contract to KMR, LLC under request for proposals FA2823-04-R-0009, issued by the Department of the Air Force for operation of central appointments and referral centers for healthcare services at Eglin Air Force Base and Hurlburt Field, Florida. Mindleaf challenges the reasonableness of the agency's price analysis and performance risk determinations, and alleges that it suffered a competitive disadvantage due to disclosure of the firm's pricing information.

We deny the protest.

On August 1, 2003, the Air Force issued a request for quotations (RFQ) for centralized appointment and referral services (CA/RS) for military healthcare facilities at Eglin Air Force Base and Hurlburt Field, Florida. The RFQ, issued as a small business set aside, contemplated the award of a fixed-price contract to a Federal Supply Schedule vendor in accordance with Federal Acquisition Regulation (FAR) Subpart 8.4. The selected vendor was to operate a number of call centers and

appointment desks, including the Centralized Appointment Call Center (CACC), Referral Management Center, Primary Care Manager by Name Desk, Tricare Plus Enrollment Center, and several health clinic appointment desks that were to be operated like the CACC. Following receipt of quotations and subsequent evaluation, the Air Force awarded Mindleaf a task order contract. Following that award, KMR, the incumbent contractor, filed a protest with our Office challenging the reasonableness of the Air Force's evaluation of past performance and its "best value" determination. We sustained KMR's protest on the basis that the past performance rating that the Air Force assigned Mindleaf was based on experience that was not relevant under the RFQ's past performance criteria. KMR, LLC, B-292860, Dec. 22, 2003, 2003 CPD ¶ 233. We recommended that the agency reevaluate the vendors under the RFQ's stated past performance evaluation criteria and perform a new best value determination.

The Air Force subsequently determined that its requirements had changed and that the solicitation's evaluation criteria needed to be modified. Thus, on April 20, 2004, the Air Force resolicited the Eglin Air Force Base and Hurlburt Field CA/RS requirement in a request for proposals (RFP). The RFP, issued as a small business set aside, contemplated award of a fixed-price contract in accordance with FAR Part 15. In addition to two base contract line item numbers (CLIN) that mirrored the CA/RS requirements contained in the original solicitation, the RFP added two option CLINs related to "benchmarking criteria."¹ The RFP stated that for price evaluation purposes, the base and option CLINs would be added together. The RFP also stated that the agency would make award to the offeror representing the best value based on three factors: mission capability, past performance, and price. For evaluation purposes, mission capability and past performance, when combined, were approximately equal when compared to price. The RFP also stated that "unrealistically low proposed costs/prices may be grounds for eliminating a proposal from competition either on the basis that the Offeror does not understand the requirement or the Offeror has made an unrealistic proposal." RFP at 21.

Eight proposals were received in response to the RFP. Both KMR and Mindleaf submitted proposals and received passing ratings for mission capability and exceptional/highly-relevant ratings for past performance. Agency Report (AR), Tab 11, Price Competition Memorandum, attach. 3, Proposal Evaluations. KMR's proposed price was \$4,080,936.00 while Mindleaf's was \$5,171,045.59. Id., attach. 2, Revised Comparison of Pricing. On June 10, 2004, the Air Force selected KMR for award. This protest followed.

Mindleaf primarily challenges the Air Force's price analysis of KMR's proposal, arguing that KMR's price was unrealistically low, given the addition of the option

¹ The benchmarking criteria related to decreasing the amount of "on hold" time experienced by callers. RFP, Statement of Work, at 3.

CLINs to the RFP. The Air Force responds that it determined that KMR's price was realistic by comparing it to other proposals and a government estimate.

Price analysis is the process of examining and evaluating proposals submitted in response to a solicitation, such as this one, which does not require offerors to submit cost elements and proposed profit. See FAR § 15.404-1(b). Examples of price analysis techniques provided in the FAR include comparison of proposed prices received in response to a solicitation and comparison of government contract prices for similar items. See FAR § 15.404(b)(2)(i), (ii).

Here, the contracting officer compared KMR's price to other prices received in response to the solicitation and determined that KMR's price was less than 4 percent below the second lowest technically acceptable offer. Contracting Officer's Statement, at 3; AR, Tab 11, Price Competition Memorandum, attach. 2, Revised Comparison of Pricing. The record also reflects that the third lowest technically acceptable offer was less than 13 percent higher than KMR's proposal. AR, Tab 11, Price Competition Memorandum, attach. 2, Revised Comparison of Pricing. Additionally, the contracting officer noted that KMR's price was 3 percent more than the government estimate, which was based on the costs of the incumbent contract. AR, Tab 11, Price Competition Memorandum, at 3.

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. We conclude that reliance on the closeness in price between KMR's proposal price and two other offers with passing mission capability ratings provided a reasonable basis for the Air Force to determine that KMR's price is realistic.²

Mindleaf also contends that because KMR's price proposal is unrealistically low, it reflects KMR's lack of understanding of the solicitation, which, in turn, represents a significant performance risk to the government. The Air Force responds that it determined that performance risk was low by virtue of KMR's understanding of the solicitation's requirements as reflected in KMR's proposal. Specifically, in addition to responding to each of the evaluation criteria, KMR's proposal identified an

² Mindleaf argues that because the government estimate does not include the benchmark criteria costs or inflation costs, comparison of KMR's price to the government estimate is not a suitable method of price analysis. Even assuming Mindleaf's contention regarding the government estimate has merit, we have no basis to disagree with the Air Force's price analysis determination because the Air Force received three technically acceptable proposals containing prices within 12 percent of each other. AR, Tab 11, Price Competition Memorandum, attach. 2, Revised Comparison of Pricing.

approach for realizing efficiency in staff training. Furthermore, KMR's experience as incumbent gave credence to KMR's understanding of the solicitation. We find no basis to disagree with the Air Force's conclusion. In any event, as discussed above, we find reasonable the Air Force's determination that KRM's price is not unrealistically low.

Mindleaf also protests that it suffered a competitive disadvantage because the firm's CA/RS contract price appeared in the redacted version of the initial protest decision. We dismiss this protest grounds as untimely. Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2004). Because Mindleaf received a copy of the redacted version of the initial protest decision, Mindleaf knew that its CA/RS contract price had been disclosed prior to the time for receipt of initial proposals under the RFP. Instead of protesting the release of its price as adverse to the firm, Mindleaf participated in the competition. For that reason, this protest ground is untimely and will not be considered.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Mindleaf also alleges that it suffered a competitive disadvantage because in the course of the initial protest, KMR had access to a letter from Mindleaf to our Office containing information about Mindleaf's CA/RS price proposal strategy. The record, however, indicates that Mindleaf approved a redacted version of its letter for release to KMR. While KMR's counsel had access to the unredacted version of the letter pursuant to a GAO protective order, Mindleaf offers no evidence or reason to believe that KMR's counsel made the unredacted letter available to KMR in violation of the express terms of the protective order.