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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: HMR Tech, LLC

File: B-295968; B-295968.2

Date: May 19, 2005

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DIGEST

Where proposals were reasonably evaluated as technically equal, agency properly selected for award the proposal of the firm submitting the lower price.

DECISION

HMR Tech, LLC protests the award of a contract to Enterprise Information Services, Inc. (EIS) under request for proposals (RFP) No. HSCG23-04-R-ADM003, issued by the United States Coast Guard (USCG), Department of Homeland Security, for project/acquisition management services for the USCG Acquisition Directorate. HMR challenges the agency's evaluation of the EIS price proposal.

We deny the protest.

The RFP, issued on July 9, 2004 as a competitive 8(a) set-aside, contemplated the award of an indefinite-delivery/indefinite-quantity contract with fixed-price task orders for a 1-year base period and four 1-year option periods to the offeror whose proposal represented the best value to the government, considering technical evaluation factors, price, and past performance. Schedule B of the RFP listed 23 labor categories; for each of these labor categories, the RFP also listed an estimated number of labor hours. Offerors were required to insert a "loaded on-site [fixed-price] hourly rate" and a "loaded off-site [fixed-price] hourly rate" for each labor category. RFP § B.1.

Section M of the RFP listed, in descending order of importance, the following evaluation factors and subfactors: (1) technical understanding and capability (understanding the types of projects; technical capability; management plan; and quality capability); (2) price (to "be evaluated to determine price realism"); and (3) relevant past performance (quality of service; timeliness of performance; business relations; and customer satisfaction). RFP § M.2. As relevant here, in order to evaluate whether an offeror understood the government's technical requirements (the first subfactor under the technical understanding and capability evaluation factor), the RFP required offerors to provide a technical proposal for each of two sample tasks.[1] According to section M of the RFP, an offeror's technical approach for each of the sample tasks would be evaluated to determine if the offeror understood the government's technical requirements. Section M of the RFP did not require offerors to submit a "cost proposal" for either of the sample tasks. Id.[2]

Finally, the RFP stated that the technical understanding and capability evaluation factor was significantly more important than price, which was significantly more important than the past performance evaluation factor. The RFP also stated that if the proposals of two or more offerors were evaluated as approximately technically equal, then the price and past performance evaluation factors would become more

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[1] The first sample task required the contractor to perform project management services to support the HC-130J Procurement Project; under this task, the services would be performed primarily off-site at the offeror's facilities. The second sample task required the contractor to provide project management services to support the USCG Office of Acquisition Resource Management and involved managing financial accounts for various acquisition projects using the Financial Procurement Desktop System. Under this task, the services would be performed primarily on-site at the USCG headquarters in Washington, DC.

[2] Section L of the RFP, which contained proposal preparation instructions, listed the four evaluation subfactors under the technical understanding and capability evaluation factor and explained what the agency would be evaluating in terms of the offeror's proposal in these four areas. Section L of the RFP then listed, without explanation, "Sample Price Proposals for Sample task order 1 and task order 2" as a fifth item to be included in an offeror's technical proposal. RFP § L.7. The agency subsequently issued (on July 15) a set of questions and answers. One question noted that section L of the RFP included five items under the technical understanding and capability evaluation factor, while section M only included four items, omitting the reference to "Sample Price Proposals for Sample task order 1 and task order 2." The question also noted that section M of the RFP stated that a "cost proposal" would not be solicited. The question contained a request for clarification concerning what "appear[ed] to be a conflicting requirement concerning cost information for the Sample Tasks." RFP Question Set, July 15, 2004. In answering this question, the agency stated that "Section L lists what is to be submitted. Section M defines evaluations. The sample proposals will be used as part of the evaluation. They will not be evaluated separately." Id.

important, with price being considered more important than past performance. RFP § M.2.

Twenty-eight firms,[3] including HMR (the incumbent contractor, which had been awarded a sole-source 8(a) contract for $3 million) and EIS, submitted proposals by the closing time on July 26. HMR teamed with three subcontractors, while EIS teamed with two subcontractors. As relevant here, the proposals of HMR and EIS were evaluated as follows:

	HMR	EIS
Technical Understanding/ Capability	Blue/Superior	Blue/Superior
Past Performance	Outstanding	Outstanding
Performance Risk	Low	Low

Agency Report (AR), Tab 12, Award Memorandum, at 13.

The color/adjectival ratings were supported by narratives of the strengths, weaknesses, and deficiencies in each offeror's proposal.[4] There were no weaknesses or deficiencies listed for either of the proposals submitted by HMR or EIS. AR, Tab 10, Technical Evaluation Report, at 11-13, 17-21.

Both HMR and EIS completed schedule B of the RFP by providing loaded on-site and off-site hourly rates for each of the 23 labor categories. Using an offeror's schedule B prices, the agency calculated an offeror's evaluated price (i.e., the total price of the base year plus all option years) as follows: 70 percent of the total

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[3] Two other firms submitted proposals which the agency rejected as non-compliant with the terms of the RFP.

[4] As relevant here, a "blue/superior" rating assigned to a proposal meant that the proposal "[e]xceed[ed] the requirements, which yields significant benefits to the Government; weaknesses, if any, are of small impact and [no] significant weaknesses or deficiencies." AR, Tab 12, Award Memorandum, at 10. With respect to past performance, proposals could receive one of the following ratings: outstanding, satisfactory, unsatisfactory, or neutral. An "outstanding" rating was defined in terms of an offeror's past performance "exceed[ing] requirements." Id. at 11. Finally, the agency assigned a performance "risk" rating to each offeror's proposal, with risk being defined as the agency's "confidence in an offeror's ability to successfully perform the technical effort." Id. at 12. A "low" performance risk rating meant that an offeror's "proposed approach has little potential to cause disruption of schedule, increase in cost[,] or degradation of performance. Normal contractor effort and normal government monitoring will probably be able to overcome difficulties." Id.

number of hours for each labor category per year was multiplied by the offeror's proposed on-site rate and 30 percent of the total number of hours for the same labor category was multiplied by the offeror's proposed off-site rate. Each extended price was summed for each year of performance to determine a total price for that year; then, each year's total price was summed to calculate an overall total price for the entire contract. AR, Tab 12, Award Memorandum, at 11. The total evaluated prices for all offerors ranged from approximately $43 million to $100 million. Id. at 13.[5] The government estimate (labor only) was approximately $53.5 million. Id. at 4. HMR's total evaluated price was approximately [deleted] percent higher than the total evaluated price of EIS and approximately [deleted] percent higher than the government estimate. The EIS total evaluated price was approximately [deleted] percent lower than the government estimate. Of the 28 firms submitting compliant proposals, HMR submitted the nineteenth lowest evaluated price, while EIS submitted the second lowest evaluated price.

In terms of price realism, the agency basically compared the schedule B hourly rates proposed by HMR and EIS for five of the RFP's labor categories (program manager, engineer, financial analyst, web specialist, and document management specialist) against the government estimate, which was based on HMR's prices as the sole-source incumbent contractor. The agency also used statistical analysis techniques (i.e., averages and standard deviations) to evaluate price realism. For HMR, the agency noted that for three of the five labor categories, HMR's proposed hourly rates were substantially lower than the government estimate and that for two of the labor categories, HMR's proposed hourly rates were higher than the government estimate. The agency nevertheless concluded that, overall, HMR's hourly rates were realistic. Id. at 29. For EIS, the agency noted that for four of the five labor categories, the EIS proposed hourly rates were substantially lower than the government estimate and that for one of the labor categories, the EIS rate was slightly higher than the government estimate. While the agency recognized that the lower hourly rates proposed by EIS represented a risk to the government in terms of the firm's ability to hire and retain qualified personnel, the agency nevertheless concluded that this risk was mitigated by the EIS proposed technical approach. Id. at 24. (In its proposal, EIS detailed, among other things, its recruiting processes and procedures in order to ensure the availability of highly qualified resources. See, e.g., EIS Proposal at 2-1--2-2, 3-2.)

In making the selection decision, the agency believed that the benefits presented by the proposals of both HMR and EIS were "nearly comparable." AR, Tab 12, Award Memorandum, at 50. The agency concluded that both HMR and EIS demonstrated a solid, sound, and comprehensive understanding of the RFP requirements. While the

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[5] The agency determined, based on having received adequate competition--28 compliant proposals were submitted--that the prices of HMR and EIS were reasonable.

agency noted some differences in the capabilities of HMR and EIS (for example, that HMR, as the incumbent contractor, would have a shorter learning curve than EIS), the agency nevertheless determined that HMR and EIS were comparable under the RFP evaluation factors. Noting that HMR's price was substantially higher than the EIS price, the agency concluded that the premium associated with HMR's proposal "is unworthy of the potential benefits, which are nearly comparable to EIS, to be gained if HMR were selected." Id. Accordingly, the agency determined that the proposal submitted by EIS represented the best value to the government, considering the technical evaluation factors, price, past performance, and associated risk. The agency awarded the contract to EIS.

HMR's primary complaint is that the agency did not reasonably evaluate the EIS price proposal for realism. In a fixed-price contract, including a fixed-rate contract such as this one, an agency may provide, as here, for the use of a price realism analysis in a solicitation for such purposes as measuring an offeror's understanding of the solicitation's requirements and for assessing the risk inherent in an offeror's proposal. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. The Federal Acquisition Regulation (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. FAR § 15.404-1(b)(2). The nature and extent of an agency's price realism analysis ultimately are matters within the sound exercise of the agency's discretion, unless the agency commits itself to a particular methodology in a solicitation. Id.

Here, section M of the RFP simply stated that an offeror's price would "be evaluated to determine price realism." RFP § M.2. Section M of the RFP provided no other information with respect to how the agency would determine the realism of an offeror's price proposal.

As described above, the agency evaluated the realism of an offeror's price proposal by comparing prices for particular labor categories to the government estimate and by using statistical analysis techniques. As a result of its analysis, the agency concluded that while the lower hourly rates proposed by EIS posed a risk in terms of the ability of the firm to hire and retain qualified personnel, the risk was mitigated by the technical approach proposed by EIS. (The agency also points out that the government's estimated rates were based on HMR's higher, noncompetitive rates as the sole-source incumbent contractor, and this may explain the substantial difference between the lower EIS rates and the government's estimated rates. See Supplemental Contracting Officer's Statement, Apr. 14, 2005, at 4.) In our view, the agency reasonably satisfied its obligation under the FAR and the RFP to perform a price realism evaluation. HMR's mere disagreement with how the agency conducted its price realism analysis for these requirements does not establish that the agency's evaluation of the realism of proposed prices was unreasonable. See, e.g., Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 8 n.8.

HMR also contends that in determining that the EIS total evaluated price was realistic, the agency failed to consider the EIS pricing for the sample tasks. HMR points out that while the total evaluated price for EIS, based on its schedule B prices, was lower than the total evaluated price for HMR, the EIS prices for the sample tasks were higher than HMR's prices for the sample tasks. Based on the higher prices submitted by EIS for the sample tasks, HMR maintains that the agency should have been concerned with whether the government would realize the savings associated with the lower EIS total evaluated price. HMR maintains that it was unreasonable for the agency not to address this "pricing anomaly" as part of its price analysis. Protester's Comments, Apr. 7, 2005, at 9-10.

As much as a challenge to the price realism analysis (which we find unpersuasive, for the reasons set out above), HMR's contention appears to challenge the reasonableness of the agency's conclusion that the EIS proposal represented a lower evaluated cost to the government than the HMR proposal.

As a threshold matter, while agencies have considerable discretion in determining the appropriate method for taking cost into account, agencies must consider cost to the government in evaluating competing proposals. 41 U.S.C. § 253(b)(1) (2000); Scientech, Inc., B-277805.2, Jan. 20, 1998, 98-1 CPD ¶ 33 at 7. An agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. S. J. Thomas Co.Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. Here, while the RFP called for offerors to price their responses to the two sample tasks and also required offerors to insert on a schedule their fixed hourly rates for specified labor categories, which included estimated hours for each labor category, section M of the RFP did not state which information the agency would use, or how, to assess the cost of performance to the government.[6] Our Office has recognized that an agency may assess the total cost to the government of competing proposals for indefinite-quantity contracts either by evaluating prices based on sample tasks or by evaluating the total cost based on estimates of the quantities of labor to be ordered under each labor category (or potentially by other methods). Id. As described above, although the sample tasks were priced by offerors, the agency elected not to compare offerors' prices for the sample tasks for the purpose of assessing the cost to the government of competing proposals. Rather, the agency determined total evaluated cost to the government by

[6] While section M called for a price realism analysis, such an analysis (in contrast to a cost realism analysis) does not lead to an estimated cost to the government of performance under a proposal, but rather (as discussed earlier) to an assessment of an offeror's understanding of the government's requirements and to the risk inherent in an offeror's proposal.

multiplying offerors' fixed hourly rates by the estimated quantities of labor hours for each labor category and totaling the amounts. As noted above, this latter method is an acceptable basis for evaluating the total cost to the government of each offerors' performance. Scientech, Inc., supra, at 7-8.

While HMR argues that the agency acted improperly in not considering the prices associated with the sample tasks in its price evaluation, section M of the RFP did not require that type of price evaluation. For the first subfactor under the technical understanding and capability evaluation factor, the RFP required an offeror to provide a technical proposal for each of two sample tasks in order for the agency to evaluate whether the offeror understood the government's technical requirements.[7] In the absence of any language in the RFP specifying an evaluation method for determining total cost, we think it was reasonable for the agency to evaluate the total cost to the government based on an offeror's proposed fixed hourly rate and the estimated number of labor hours contained in the schedule.[8]

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[7] The record shows that the agency evaluated the sample tasks in accordance with the terms of the RFP, that is, the agency evaluated the offerors' responses to the sample tasks, as well as the other information included in the HMR and EIS technical proposals, to conclude that both firms understood, and were capable of performing, the government's technical requirements. We have no basis to question the reasonableness of the agency's conclusion that both HMR and EIS demonstrated their technical understanding of, and their capability to perform, the RFP requirements. Further, HMR does not meaningfully challenge any aspect of the agency's evaluation of the EIS technical proposal, including its record of past performance.

[8] HMR points to language in section L of the RFP, as described above, that refers to sample price proposals for the sample tasks in arguing that the agency unreasonably failed to consider the EIS pricing for the sample tasks in evaluating the EIS price proposal. However, to the extent that there is any inconsistency and/or ambiguity in the terms of sections L and M of the RFP as far as what information, including prices for the sample tasks, the agency would consider in evaluating an offeror's total evaluated price or the realism of an offeror's price proposal, this matter involves a defect in the terms of the solicitation that was apparent from the face of the RFP. Under our Bid Protest Regulations, a protest based upon an alleged impropriety apparent from the face of the RFP must be protested prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2005). HMR's post-award challenge in this regard is untimely.

In any event, we point out that information requirements provided in section L of an RFP are not the same as evaluation criteria in section M; rather than establishing minimum evaluation standards, the instructions of section L generally provide guidance to assist offerors in preparing and organizing proposals. The information required by section L does not have to correspond to the evaluation criteria in

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In addition, as the higher-priced incumbent contractor, HMR objects to the agency's decision to award this contract, under which fixed-price task orders will be issued, to EIS at a substantially lower price. However, an agency is vested with broad discretion to determine the manner and extent to which it will make use of evaluation results. PharmChem, Inc., B-291725.3 et al., July 22, 2003, 2003 CPD ¶ 148 at 9. Where, as here, an agency reasonably determines that proposals are essentially technically equal, price becomes the determining factor in making the award, notwithstanding that under the RFP, price is assigned less importance than the technical evaluation factors. Id. In this case, the agency was aware of the substantially lower EIS total evaluated price, but nevertheless concluded that the EIS price, based on the firm's proposed approach for performing the work, was fair and reasonable and presented low risk.

Since there is no basis on this record to question the reasonableness of the agency's assignment of the same technical ratings to the proposals of HMR and EIS, and where the agency concluded that both HMR and EIS demonstrated their understanding of, and capability to perform, the RFP requirements, we conclude that it was reasonable for the agency to determine that the EIS technically equal, lower-priced proposal represented the best value to the government in accordance with the terms of the RFP.

Finally, HMR has raised other collateral issues and arguments, each of which we have considered and find without merit. For example, HMR argues that the EIS price proposal contained unbalanced pricing. See FAR § 15.404-1(g)(1). Even assuming, arguendo, that the EIS prices were unbalanced, an agency's acceptance of a proposal with unbalanced pricing is not, in and of itself, improper since an agency may lawfully award a contract on the basis of a proposal with unbalanced pricing, provided it has concluded that the pricing does not pose an unacceptable level of risk, and the prices the agency is likely to pay under the contract are not unreasonably high. FAR § 15.404-1(g)(2); Crofton Diving Corp., B-289271, Jan. 30, 2002, 2002 CPD ¶ 32 at 8. Here, the agency made the required showings in terms of the risks associated with the EIS lower-priced proposal.

As another example, HMR argues that the agency "improperly communicated and improperly held discussions with EIS that were not meaningful." Protester's Supplemental Comments, Apr. 20, 2005, at 14. The record shows that prior to award, the agency asked EIS to explain how it calculated its "per hour rate" for the labor categories and it asked the firm to confirm that these rates were "fully burdened."

(...continued)
section M. All Phase Envtl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 4. As discussed above, in this case, section M of the RFP did not state that prices for the sample tasks would be evaluated as part of the agency's price evaluation.

EIS Response to Agency Questions, Dec. 17, 2004. Again, even assuming, arguendo, that discussions occurred, HMR has failed to demonstrate how it was prejudiced. In this respect, HMR states that if discussions with EIS had been meaningful, the agency would have concluded that the EIS price "would have been much higher." Protester's Supplemental Comments, supra, at 15 n.10. However, HMR's position is based on its own speculation, unsupported by anything in the record (for example, any evidence that EIS would have increased its price by approximately 25 percent, the amount by which HMR's total evaluated price exceeded the EIS total evaluated price). Further, HMR states that it does not object to "the [a]gency's failure to hold discussions with [it]." Id. at 16. In other words, HMR does not contend that if discussions had been held with it that it would have substantially reduced its price since such a reduction would have been inconsistent with its proposed technical approach.

As discussed above, our review of the record shows that the agency's evaluation was reasonable and in accordance with the terms of the RFP.

The protest is denied.

Anthony H. Gamboa
General Counsel