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Decision

Matter of: General Dynamics--Ordnance & Tactical Systems

File: B-401658; B-401658.2

Date: October 26, 2009

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DIGEST

1. Protest that agency improperly failed to conduct price realism evaluation of awardee's proposed price is denied where record shows that agency, in fact, conducted such an evaluation, and reasonably determined that awardee's prices were realistic.
2. Protest that awardee's prices were impermissibly unbalanced is denied where prices were virtually identical for all quantity ranges of essentially identical units being purchased, and record fails to establish that awardee's unit prices were overstated or understated.
3. Agency did not conduct unequal discussions with protester and awardee where record shows that agency discussed all concerns relating to each firm's proposal; fact that agency did not discuss price with protester is unobjectionable where record does not show that agency found its proposed prices unreasonable.
4. Agency's decision to select lower-rated, lower-priced proposal for award, even though technical considerations were more important than price, was unobjectionable where tradeoff is fully supported by record.

DECISION

General Dynamics--Ordnance & Tactical Systems (GD), of Marion, Illinois, protests the award of a contract to American Ordnance, LLC (AO), of Middleton, Iowa, under request for proposals (RFP) No. W52P1J-08-R-0080, issued by the Department of the Army for the loading, assembly and packing of 81 millimeter and 120 millimeter mortar cartridge propelling charges (MCPC). GD maintains that the agency miscalculated the awardee's price proposal, failed to engage in meaningful discussions, and made an unreasonable price/technical tradeoff in support of its award decision.

We deny the protest.

The RFP solicited fixed prices for a base period and four option periods. Firms were advised that the agency would evaluate proposals based on proposed price, as well as several non-price considerations, and would make award to the firm whose proposal was deemed to offer the agency the "best value." RFP § M, at 1. Specifically, the RFP advised that the agency would evaluate proposals based on technical considerations, which was deemed significantly more important than the second factor, past performance, which was deemed slightly more important than the third factor, price, which was deemed significantly more important than the fourth factor, small business utilization.¹ RFP § M, at 2-3. The RFP also provided that, for the technical factor, the agency would assign proposals adjectival ratings of exceptional, acceptable, marginal, or poor, along with risk ratings of high, moderate or low; for the past performance factor, proposals would be assigned combined ratings of poor/high performance risk, marginal/moderate performance risk, excellent/low performance risk, or neutral performance risk; and for the small business utilization factor, proposals would be assigned adjectival ratings of excellent, good, adequate or marginal. RFP, Section M, at 10-14.²

The agency received four proposals. After evaluating initial proposals, engaging in discussions with all four concerns, and soliciting and evaluating final proposal revisions, the agency made award to AO, finding that its proposal represented the best value to the government; the record shows, in this respect, that AO's proposal was rated somewhat technically inferior to GD's, but that the agency concluded that

¹ The technical factor had three subfactors: manufacturing plan, deemed slightly more important than quality assurance and critical safety characteristics plan, in turn deemed significantly more important than management plan. RFP, Section M at 3. The past performance factor had two subfactors, quality, deemed slightly more important than on-time delivery. *Id.*

² The record shows that ratings were assigned at both the subfactor and factor levels for the technical and past performance factors.

the price premium associated with GD's proposal was not worth the technical superiority it offered. Agency Report (AR), exh. 15, at 65-69. After being advised of the agency's source selection decision and receiving a debriefing, GD filed this protest.

EVALUATION OF AO'S PRICE PROPOSAL

Price Realism

GD asserts that the agency did not adequately evaluate AO's price proposal for realism.

In addition to the specific evaluation criteria outlined above, the RFP provided generally as follows:

Proposals that are unrealistic in terms of technical or schedule commitments, unrealistically low in price, or contain unbalanced option prices will be considered indicative of a lack of understanding of the complexity and risk in the contract requirements and may be determined unacceptable.

RFP § M, at 2. As reflected in the solicitation provision above, the utility of evaluating prices for realism in the context of a fixed-price contract is limited to evaluating the technical understanding of the offeror and assessing the risk inherent in an offeror's proposal. Burns and Roe Servs. Corp., B-296355, July 27, 2005, 2005 CPD ¶ 150 at 7. Agencies may use a variety of price evaluation methods to assess realism, including an analysis of pricing information provided by the offeror, or a comparison of the prices received to one another, to previously proposed or historically paid prices, or to an independent government estimate. Id. The nature and extent of an agency's price realism analysis ultimately are matters within the discretion of the agency, unless the agency commits to a particular evaluation method in the solicitation. Id.

Here, the record shows that the agency compared offerors' proposed prices to one another, to an independent government estimate, and to historical pricing information. AR, exhs. 10, 10.1, 10.3, 1.0.4. Particularly revealing, in our view, is the agency's comparison of the proposed unit prices to prices historically paid for similar or identical items. The review of AO's prices is summarized by the source selection authority (SSA) in the source selection decision document as follows:

Their proposed base unit price of [deleted] for 81mm Prop Charges compare[s] favorably to their historical prices of either [deleted] (M218) or [deleted] (M219) as identified in the chart above. Their proposed option prices compare favorably as well. This shows that AO has successfully produced 81mm Prop Charges at prices similar to their proposed prices. AO's proposed base unit price of [deleted] for

120mm Prop Charges compares favorably to historical prices of [deleted] (M233) and [deleted] (M234) as identified in the above chart. Their proposed option prices for 120mm Prop Charges, ranging from [deleted] (base and option year 1) to [deleted] (smallest quantity range in option year 4) compare favorably to other historical prices for the 120mm Prop Charges. Historically, the prices for 120mm Prop Charges range from [deleted] to [deleted] depending on the quantity ordered. This shows that AO appears to be in line with historical data.³

AR, exh. 15, at 55. The record thus shows that, contrary to GD's assertion, the agency did consider the realism of AO's prices. Based on a comparison with the prices at which AO previously performed, it concluded that AO's current prices were realistic. On this record, we conclude that the agency's price evaluation was reasonable.

Unbalanced Prices

GD asserts that AO's prices should have been found to be impermissibly unbalanced as between the solicitation's quantity requirements.

There is no merit to this aspect of GD's protest. By way of background, the RFP required offerors to submit pricing based on discrete and differing quantities for each of the different MCPCs during the option periods.⁴ Offerors were required to provide fixed unit prices for each of the quantity ranges, for each size MCPC, for each option year. Thus, for example, the firms were required to offer fixed unit prices for 81 millimeter MCPCs for each option year based on quantities from 5,000 to 550,000 units; from 550,001 to 1,100,000 units; from 1,100,001 to 1,650,000 units; from 1,650,001 to 2,200,000 units; and from 2,200,001 to 2,900,000 units (the quantity

³ In contrast, the SSA found, with respect to one of GD's prices as follows:

GD-OTS proposed base unit price of [deleted] for 81mm Prop Charges compare[d] to their historical prices of [deleted] (M218), [deleted] (M219) and [deleted] (M220) and represents a decrease ranging from [deleted]. The decreases associated with the M219 and M220 historical prices are causes for concern because they raise the issue as to whether or not GD-OTS could successfully produce the 81mm Prop Charges at the lower prices proposed.

Id. at 56.

⁴ The RFP specified base quantities for each size of the MCPCs: 1,882,184 units for the 81 millimeter MCPCs, and 611,302 units for the 120 millimeter MCPCs. RFP, Amend. No. 6, at 3-4; see also, RFP Pricing Matrix.

ranges varied slightly between the option years). RFP Pricing Matrix. In calculating the offerors' evaluated prices, the agency multiplied their proposed unit prices by the maximum number of units in each quantity range. The agency then calculated a weighted average based upon the likelihood of its exercising the option within a particular quantity range; the agency assigned a 10 % likelihood of exercising the options at each of the four lower quantity ranges, and a 60 % likelihood that it would exercise the option at the highest quantity range. RFP, Pricing Matrix.

AO's pricing was relatively level, deviating only slightly among the quantity ranges. For example, in the first option year, AO's pricing for the 81 millimeter MCPCs was as follows:

Quantity Ranges	Price
5,000 to 550,000 units	[deleted]
550,001 to 1,100,000 units	[deleted]
1,100,001 to 1,650,000 units	[deleted]
1,650,001 to 2,200,000 units	[deleted]
2,200,001 to 2,900,000 units	[deleted]

AR, exh. 4.2, AO Pricing Matrix. GD maintains that AO's prices are materially unbalanced because its prices for the smaller quantity ranges are understated. In support of its position, GD points to its own and other offerors' prices. For example, GD's prices for the 81 millimeter MCPCs in the first option year were as follows:

Quantity Ranges	Price
5,000 to 550,000 units	[deleted]
550,001 to 1,100,000 units	[deleted]
1,100,001 to 1,650,000 units	[deleted]
1,650,001 to 2,200,000 units	[deleted]
2,200,001 to 2,900,000 units	[deleted]

GD concludes that AO's prices must be understated for the lower quantities given that economies of scale would lead to lower prices for larger quantities.

The agency reasonably determined that AO's prices were not unbalanced. First, a comparison of the awardee's prices to those of the protester, without more, is insufficient to show that the awardee's prices are unbalanced. N.V. Heathorn, Inc., B-245847, Jan. 2, 1992, 92-1 CPD ¶ 11 at 2. Second, unbalanced pricing exists where the prices of one or more CLINs are significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 15; Triple H Servs., B-298248, B-298248.2, Aug. 1, 2006, 2006 CPD ¶ 115 at 2; see Federal Acquisition Regulation (FAR) § 15.404-1(g)(1). The protester has neither alleged nor shown that AO's prices were overstated. Low prices (even

below-cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing. Diversified Capital, Inc., B-293105.4, B-293105.8, Nov. 12, 2004, 2004 CPD ¶ 242 at 2 n.1; Islandwide Landscaping, Inc., B-293018, Dec. 24, 2003, 2004 CPD ¶ 9 at 3.

In any case, the agency reasonably determined that AO's proposed prices for the low quantity ranges were not understated. In this respect, as noted, the record includes historical pricing information reflecting the prices previously paid by the agency to AO for the 81 millimeter MCPs. Those prices—[deleted]—were, respectively, for quantities of 45,277 and 220,465 units, that is, quantities within the lowest quantity range included in the current solicitation. AR, exh. 10.3, at 6. We note as well that, for the base quantity—which definitely will be ordered—AO proposed a price of [deleted]. Given the relative comparability of these prices to those in question, there is no basis to conclude that AO's prices for the low quantity ranges were understated.

Exaggerated Price Advantage

GD maintains that the AO pricing advantage—AO's total evaluated price was \$21,866,761, or approximately 19.1% lower than GD's, AR, exh. 15, at 55-56—was exaggerated by its level pricing scheme. According to the protester, if the agency orders the maximum quantities during all of the option years, AO's price advantage will be smaller than the advantage calculated by the agency for evaluation purposes because GD's prices for the maximum quantities are closer to AO's for the maximum quantities. This essentially is a challenge to the solicitation's price evaluation scheme. As noted, since the agency could not determine the quantities that actually would be ordered, the RFP's evaluation scheme accounted for the likelihood of acquiring the various quantities by assigning probability percentages to the different quantity ranges. The RFP therefore was clear that the evaluation would utilize a price based on a calculated probability for price comparison purposes, rather than on an actual price for a particular quantity. GD is correct that, as a result of this methodology, AO's price advantage could be different depending upon the quantity ordered. However, since this was apparent from the scheme set forth in the RFP, to the extent GD objects to this approach, it was required to protest on this ground prior to the deadline for submitting proposals; protests of alleged solicitation improprieties that are apparent from the face of the solicitation must be filed prior to the deadline for submitting proposals. 4 C.F.R. § 21.2(a)(1) (2009). This argument therefore is untimely and we will not consider it.

DISCUSSIONS

GD maintains that the agency should have afforded it discussions relating to its prices because, according to GD, the agency found its prices unreasonably high.

As a general matter, although discussions must address deficiencies and significant weaknesses in a firm's proposal, the precise content of discussions is largely a

matter of the contracting officer's judgment. FAR § 15.306(d)(3); Metro Mach. Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19. We review the adequacy of discussions to ensure that agencies point out weaknesses or deficiencies that, unless corrected, would prevent an offeror from receiving award. Id. In terms of discussing price, agencies are not required to advise a firm that its prices are considered high, unless it has determined that the offeror's prices are unreasonably high, such that they would preclude award to the firm. Karrar Sys. Corp., B-310661, B-310661.2, Jan. 3, 2008, 2008 CPD ¶ 51 at 3.

The discussions here were unobjectionable. GD's argument is based on the flawed premise that the agency considered its prices unreasonably high so as to preclude award to GD. This simply is not the case. While the record does reflect the agency's finding that some of GD's option year prices for smaller quantity ranges were high in comparison to its base year price, AR, exh. 10.3, at 3-4, the agency also determined that its option year prices for the larger quantity ranges were more favorable. Id. The agency's ultimate conclusion regarding GD's pricing was that they "implie[d] a relatively inefficient improvement curve both within the option period and most importantly over time/contract period of performance." Id. at 4. The record also shows that the SSA determined that the price range among all four offerors of 19.1% indicated a "close competitive grouping." AR, exh. 15 at 56. Thus, there is no indication that the agency found GD's prices to be unreasonably high, or that they otherwise precluded award to the firm. It follows that the agency was not required to discuss GD's proposed prices with the firm. Karrar Sys. Corp., supra.

GD claims that discussions were unequal because the agency provided AO with multiple rounds of detailed discussion questions, repeatedly giving AO an opportunity to address the agency's concerns, but did not provide GD with similarly detailed discussions. However, there is nothing legally objectionable in an agency's conducting multiple rounds of discussions to resolve significant weaknesses or deficiencies found in a proposal. Dynacs Eng'g Co., Inc., B-283234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 3-4. Here, the record shows that, after the first round of discussions, a number of significant weaknesses in AO's proposal remained, thus warranting further detailed discussion questions. AR, exh. 6.1, at 4-7, 9-12. In contrast, there were no technical weaknesses or deficiencies identified in GD's proposal, AR, exh. 15, at 5-10, and there thus was no need to present GD with further questions (GD was provided with the same opportunity to submit a final revised proposal).

PRICE/TECHNICAL TRADEOFF

Beyond the price evaluation considerations discussed above, GD has not otherwise challenged the agency's evaluation of proposals. GD does, however, challenge the reasonableness of the agency's price/technical tradeoff.

The record shows that, in the final analysis, the agency assigned the GD proposal exceptional/low risk ratings for the technical factor overall, as well as for the two

most important subfactors, manufacturing plan and quality assurance and critical safety characteristics plan (GD's proposal received an acceptable/low risk rating under the third technical subfactor, management plan). AR, exh. 15, at 4. The agency also rated GD's proposal excellent/low performance risk under the past performance factor overall, and under each of the two past performance subfactors. Id. As for AO, the agency assigned its proposal an acceptable/moderate risk rating under the technical factor overall, with acceptable/moderate risk ratings under the first and third subfactors (manufacturing plan and management plan), and an acceptable/low risk rating under the second subfactor (quality assurance and critical safety characteristics plan). AR, exh. 15, at 4. For past performance, the agency assigned AO an acceptable/moderate performance risk rating under the factor overall, with an exceptional/low performance rating under the quality subfactor and an adequate/moderate performance risk rating under the on-time delivery subfactor. Id. On the basis of these ratings, the agency made award to AO, finding that its proposal's technical superiority did not merit paying its price premium of \$21,866,761. AR, exh. 15, at 59-69.

GD asserts that the agency either minimized or ignored all of the strengths associated with its proposal, while minimizing or ignoring all of the weaknesses found in the AO proposal. GD further asserts that the source selection essentially ignored the RFP's weighting scheme, under which price was to be significantly less important than the technical considerations and past performance factors.

It is well-settled that an agency properly may select a lower-rated, lower-priced proposal, even where price is a less important evaluation factor than technical merit, where it reasonably concludes that the price premium involved in selecting the higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. See, e.g., Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. A protester's disagreement with the agency's determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

The tradeoff and source selection here were reasonable. There is no need for extensive documentation of every consideration factored into a tradeoff decision; the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals. Nonetheless, the record shows that the agency here considered and exhaustively documented the relative merits of the proposals in a 69 page, single spaced, SSDD; the SSA clearly was aware of the relative merits and comparative prices of the AO and GD proposals when he made his tradeoff. In this regard, the SSA comprehensively identified and described all of the strengths included in the GD proposal (as well as the fact that there were no identified weaknesses), AR, exh. 15, at 5-9, 34-36, and, correspondingly, identified

all of the strengths and weaknesses found in AO's proposal. *Id.* at 10-18, 36-42. The SSA then went on to extensively analyze the offerors' prices. *Id.* at 54-56. After performing this detailed analysis of the relative merits of the proposals, the SSA then made his tradeoff, extensively comparing the relative merits of the AO proposal with those of the GD proposal, and considering as well, the price difference between the two proposals.⁵ *Id.* at 65-69. After his extensive analysis, the SSA concluded, with respect to the evaluation under the technical factor:

Although AO received an overall Technical rating of Acceptable/Moderate Risk, it is evident that they are more than capable of meeting the requirements as they are the current producer of the 60mm Propelling Charges and have experienced very few technical difficulties on that effort. GD-OTS' amount of technical superiority represented by their overall Exceptional/Low Risk rating doesn't offset the significant difference in the total evaluated price where GD-OTS' total evaluated price is 19.1% higher than AO. It is important to note that AO's strength under Subfactor 1 was the same as GD-OTS and that although GD-OTS received a significant strength regarding their current operation at 60% of capacity, AO also has current maximum capacity that is complete and more than adequate.

AR, exh. 15, at 67. With respect to the past performance factor, the SSA concluded:

As noted above, AO and GD-OTS both received Excellent/Low Performance Risk for the Quality subfactor as there is little doubt that either offeror can successfully perform IAW the quality provisions and perform the required effort. Although AO received an Adequate/Moderate Performance Risk rating for On-Time Delivery in comparison to GD-OTS Excellent/Low Performance Risk, AO did deliver ahead of schedule on three of their contracts and the reasons for not delivering on schedule were not significant and were addressed by AO during discussions. I fully expect that these types of issues could be overcome and prevented with further emphasis by AO and normal Government monitoring of the delivery schedule. The difference in AO and GD-OTS ratings for Past Performance are not

⁵ GD argues extensively that the SSA did not recognize or identify the specific strengths and weaknesses between its proposal and AO's proposal in his tradeoff decision because he generically referred numerous times only to the number of strengths and weaknesses identified in the proposals. However, as noted, the firms' proposals were discussed exhaustively in the earlier portions of the SSDD; the fact that the SSA may have used generic or shorthand references to the strengths and weaknesses specifically identified earlier in the same document when discussing his award decision is unobjectionable.

significant enough to justify paying a premium of 19.1% or \$21.8M to GD-OTS.

AR, exh. 15, at 67. The SSA then summarized his decision as follows:

Although the analysis of proposals shows that GD-OTS has better Technical and Past Performance ratings than AO, my decision is not based on those factors alone. My decision is based on the combination of all price and non-price factors. I've considered the fact that GD-OTS had significant strengths in their Technical proposal that contributed to their overall rating, but recognize that AO's proposal contained strengths and comparable items that decrease risk that lead me to determine that while GD-OTS' proposal received an Exceptional/Low Risk rating, AO's proposal does demonstrate a good understanding and does not include the price premium that GD-OTS proposed. Both AO and GD-OTS exhibit Excellent/Low Risk under Past Performance Subfactor 1 for Quality, therefore, the Government would not sacrifice quality in awarding to AO. AO did earn a rating of Adequate/Moderate Risk for Past Performance Subfactor 2 for On-Time Delivery, while GD-OTS earned an Excellent/Low Risk. By virtue of the five recent, relevant contracts that AO submitted in comparison to the one that GD-OTS submitted, it is evident that AO had greater potential for delivery issues due to the sheer quantity volume of deliveries required. Although AO fully responded to the On-Time Delivery negative findings, the fact that they do exist influences the Subfactor 2 rating, but I believe that normal Government monitoring will support on-time deliveries of the 81mm/120mm Prop Charges to be accomplished by AO.

AR, exh. 15, at 68. From the discussion in the SSDD, it is clear that the SSA understood the evaluated differences between the technical proposals and past performance of AO and GD, and reasonably decided to award to AO because of what the SSA viewed as the substantial price premium associated with the GD's higher rated proposal. We conclude that there is no basis to object to the agency's source selection decision here.

The protest is denied.

Lynn. H. Gibson
Acting General Counsel