



Decision

Matter of: C.L. Price & Associates, Inc.

File: B-403476.2

Date: January 7, 2011

Carl L. Price, Jr. for the protester.

David L. Bell, Esq., Department of the Navy, for the agency.

Noah B. Bleicher, Esq., Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to consider whether the awardees' prices were unrealistically or unreasonably low is denied where solicitation provided for the award of a fixed-price contract and realism analysis was not required, and the agency reasonably determined, using appropriate price analysis techniques, that prices were fair and reasonable.

2. Protest challenging the agency's evaluation of the protester's corporate experience is denied where the agency reasonably determined that the protester lacked desired infrastructure experience.

DECISION

C.L. Price & Associates, Inc., of Newport, North Carolina, protests the award of multiple contracts issued by the Department of the Navy, Naval Facilities Engineering Command, under request for proposals (RFP) No. N40085-09-R-5308 for general construction services to be performed at the Marine Corps Base Camp Lejeune, Marine Corps Air Station Cherry Point, and outlying bases in North Carolina. C.L. Price challenges the agency's evaluation of price and corporate experience.

We deny the protest.

BACKGROUND

On May 15, 2009, the Navy issued the RFP in order to select vendors for Multiple Award Construction Contracts (MACC) to provide a variety of general construction

services including, for example, new construction, building renovation, and installation of a variety of infrastructure systems. The RFP anticipated that the successful vendors each would receive an indefinite-delivery, indefinite-quantity contract for a 1-year base period with four 1-year option periods. RFP at 3-5, 8. The total estimated construction cost for all of the awards under this RFP was not to exceed \$450,000,000. Contracting Officer's Statement, Oct. 7, 2010, at 1.

The RFP announced that awards would be made to the offerors whose proposals provided the best value to the government, based on technical and price factors, with the technical factors being "approximately equal" to the price factor. Id. The solicitation identified three equally-weighted technical factors (corporate experience, past performance, and safety) and stated that price would be evaluated on the basis of a cumulative price for all line items in the solicitation for a "seed project." Id. at 52. The seed project was to replace windows in one of the buildings at the Marine Corps Base in Camp Lejeune. Id. The RFP provided that, at the time of the initial awards, one vendor would also receive a fixed-priced task order for the seed project. The RFP reserved the initial task order for the offeror whose proposal represented the best value to the government for the seed project. Thereafter, additional fixed-price task orders for construction projects would be competed among the MACC holders, typically on a lowest-priced/technically-acceptable basis. Id. at 8.

In response to the RFP, the agency received 67 proposals, including the protester's. The agency evaluated the proposals and assigned adjectival ratings of excellent, good, satisfactory, marginal, and poor for each technical factor. Twelve offerors' proposals, which received ratings of good or better overall, and ratings of good or better for each individual technical factor, were included in the competitive range. The protester's proposal was not included in the competitive range because it received a rating of satisfactory under the corporate experience factor. Contracting Officer's Statement, Oct. 7, 2010, at 2.

C.L. Price filed a timely protest with our office on August 3, 2010, challenging the exclusion of its proposal from the competitive range. In response, the agency took corrective action by reevaluating proposals and adding three proposals, including the protester's, to the competitive range. In implementing this corrective action, the agency raised C.L. Price's proposal rating from satisfactory to good under the corporate experience factor. As a result of the agency's corrective action, our Office dismissed the protest on August 11.

Thereafter, the agency held discussions with the 15 offerors whose proposals were in the competitive range, and sought and evaluated final proposal revisions. The final evaluation ratings reflect that 3 proposals received overall excellent ratings and 12 proposals (including C.L. Price's proposal) received overall good ratings. Final proposal prices for the seed project ranged from \$137,000 to \$560,000; the independent government estimate (IGE) was \$271,094 and the median proposal price was \$241,975. The protester's proposed price of \$248,000 was the ninth-lowest in

price, and was 11 percent, or \$28,000, higher than the next lowest-priced proposal. Agency Report (AR), Tab 4, Business Clearance Memorandum, at 8, 16, 20.

The agency determined that the seven lowest-priced proposals in the competitive range provided the best value to the government.¹ The agency awarded MACCs to the offerors who submitted these proposals, and it awarded the seed project task order to the offeror among those seven who submitted the lowest-priced proposal, after determining that the lowest-priced proposal represented the best value to the government. Id. at 25-26.

On September 15, C.L. Price was notified that its proposal was not selected for award. After requesting and receiving a debriefing, C.L. Price filed this protest.

DISCUSSION

The protester contends that the agency accepted unreasonably low prices and that the technical evaluation was flawed.

With respect to the price evaluation, the protester contends that the agency “fail[ed] to fulfill the responsibility to assure realistic and reasonable pricing.” Protest at 2. It argues that the awardees’ prices are “artificially low” and “predatory.” Id. The protester complains that the awardees’ offers “to do the job at little or no profit . . . is a conscious attempt to exclude competitors from the seed project and entire [MACC] program,” Comments at 1-2, and that awarding C.L. Price a contract would “guarantee balance” and “provide increased value to the Government.” Protest at 3. The protester asserts that the fact that the government estimate was higher than the awardees’ prices is further evidence that the government “ignored the issues of reasonableness and realism.” Comments at 2.

As noted above, the awards in this procurement were based on the evaluation of a fixed-price seed project. Although an agency is required to determine that offered prices are fair and reasonable before awarding a fixed-price contract, Federal Acquisition Regulation (FAR) § 15.402(a), the purpose of a price reasonableness evaluation in a fixed-price environment is to determine whether prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror’s low price will not be adequate to meet the costs of performance. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Arguments that an agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism. SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. However, a price realism evaluation is not required where, as here, the solicitation

¹ Two of these proposals received overall excellent ratings, and five received overall good ratings. AR, Tab 5, Business Clearance Memorandum, at 16, 25.

provides for the award of a fixed-price contract and does not include a requirement for price realism.² Id. Thus, the protester's assertion that the agency failed to perform a realism analysis or consider whether the awardees' prices are too low does not provide a basis to sustain the protest.

With regard to an agency's obligation to ensure fair and reasonable pricing in awarding fixed-price contracts, the FAR permits the use of various price analysis techniques and procedures, including the comparison of proposed prices received in response to the solicitation to each other or to an independent government estimate. FAR § 15.404-1(b)(2); Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. In fact, agencies may rely upon adequate price competition alone to assess price reasonableness. See FAR § 15.404-1(b)(2)(i); Patriot Taxiway Indus., Inc., B-403690, Dec. 6, 2010, 2010 CPD ¶ __ at 7.

Here, the agency compared offerors' proposed prices to the IGE, to the other prices received, and to the median proposal price of the offerors in the competitive range. AR, Tab 4, Business Clearance Memorandum, at 8. The agency did not, however, view the IGE as the best basis of comparison of fair and reasonable pricing, given that offerors were encouraged to provide their lowest possible prices on the seed project in order to receive a MACC and be eligible for further task orders.³ Id. at 9. The agency instead determined that the "significant extent of competition" was a better comparison tool to establish fair and reasonable pricing. Id. The record shows that the awardees' proposed prices for the seed project ranged from \$137,000 to \$220,000, all of which were below the IGE and the median proposed price. Id. at 8. Based on the adequacy of price competition, these prices were found to be fair and reasonable. Id. at 9, 12. In addition, the agency found the protester's proposed price of \$248,000 to be fair and reasonable, even though it was 11 percent higher than the highest-priced proposal selected for award and 2.5 percent higher than the

² The RFP here incorporated a standard provision stating that if a cost realism analysis is performed the source selection authority could consider cost realism in evaluating performance or schedule risk. RFP at 12 (incorporating FAR § 52.215-1(f)(9)). However, a cost realism analysis was not performed, and was not required to be performed here, since the RFP requested fixed-price proposals.

³ The agency, however, did view the IGE as an indicator of whether prices were unrealistically high. AR, Tab 4, Business Clearance Memorandum, at 9.

median price.⁴ Id. at 8, 12. Based on this record and the fact that there was adequate price competition, we find nothing improper in the agency's determination that the awardees' and the protesters' proposed prices were fair and reasonable.

C.L. Price also complains that its proposal should have received a rating of excellent, rather than good, under the corporate experience factor. Comments at 3. The protester contends that the good rating was "unjustified," "unrealistically low," and "reflects an unreasonable interpretation of the Rating Scheme" set forth in the RFP.⁵ Id.; Protest at 3-5.

The evaluation of technical proposals is generally a matter within the agency's discretion. METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 4. Our Office will review a challenge to an agency's evaluation only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation factors and applicable procurement statutes and regulations. Manassas Travel, Inc., B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 2-3. A protester's mere disagreement with the agency's evaluation does not establish that the evaluation was unreasonable. Id. at 3.

With regard to the corporate experience factor, the RFP required offerors to demonstrate experience in "new construction, demolition, repair, and interior/exterior alteration/renovation of buildings, systems and infrastructure" valued between \$100,000 and \$5,000,000. RFP at 49. According to the solicitation, more weight would be given in the evaluation to proposals that demonstrated (1) experience performing as the prime contractor, (2) experience working simultaneously on several relevant projects, and/or (3) experience performing a diversified range of general construction projects. Id.

⁴ During discussions, the protester was advised that its "price is below the median price received from the offerors in the competitive range." Protest, exh. 4, Discussion Letter, at 1. In response, C.L. Price revised its initial proposed price of \$246,100 upwards to \$248,000. To the extent that the protester asserts that discussions were misleading, see Protest at 3, the record does not support this contention. The discussion letter did not request or encourage the protester to raise its price, and merely mentioned the protester's price standing relative to the median price of the proposals received.

⁵ The protester generally asserts that it has more experience than the awardees and that its proposal was not given the "same level of consideration" in the evaluation. Comments at 3; Protest at 4. However, we find no evidence of unequal treatment in the record, and the protester has not presented persuasive evidence to call into question the ratings assigned to the awardees' proposals.

As noted above, C.L. Price's proposal was rated good under the corporate experience factor and good overall. The proposal did not receive an excellent rating under the corporate experience factor, however, due to the protester's lack of infrastructure work experience. AR, Tab 4, Business Clearance Memorandum, at 14. As the agency explains, C.L. Price demonstrated relevant experience with new construction, renovation, and related site work, but lacked experience with "municipal-type infrastructure" of the type required by the RFP. Contracting Officer's Statement, Oct. 13, 2010, at 1. The agency gave the proposal credit for relevant corporate experience and assessed the proposal strengths because C.L. Price had acted as a prime contractor and performed projects concurrently; however, the agency determined that the company's lack of experience with municipal-type infrastructure prevented the proposal from receiving an excellent rating under the corporate experience factor. *Id.*; AR, Tab 4, Business Clearance Memorandum, at 14; AR, Tab 3, Technical Evaluation Board Report, at 16. Although the protester disagrees with the agency's analysis and continues to argue that it has extensive and excellent experience, it has not shown that the agency's evaluation conclusions, which were based on the criteria stated in the RFP, were unreasonable.⁶

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁶ C.L. Price also protests the evaluation of its past performance, contending that the agency only considered responses from four of five past performance references it identified in its proposal. Comments at 4. However, the RFP placed the burden on the offeror to ensure that references responded to the agency's performance questionnaires, and here only four of the protester's references responded. Under these circumstances, we find that the agency's past performance evaluation was unobjectionable. See American Floor Consultants, Inc., B 294530.7, June 15, 2006, 2006 CPD ¶ 97 at 3-5.