



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Hillstrom's Aircraft Services

File: B-403970.2

Date: December 28, 2010

David M. Hillstrom, for the protester.
Brian A. Darst, Esq., Brian A. Darst Law Office, for the intervenor.
Capt. Anna L. Campbell, and Larry M. Anderson, Esq., Department of the
Air Force, for the agency.
Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency's determination that awardee's lower-rated, lower-priced proposal represented the best value was reasonable and consistent with the solicitation's terms.

DECISION

Hillstrom's Aircraft Services, of Vacaville, California, protests the award of a contract to Empire Aircraft Services, of Summerville, South Carolina, under request for proposals (RFP) No. FA4427-09-R-0017, issued by the Department of the Air Force, for aircraft corrosion control services. Hillstrom's asserts that the agency deviated from the solicitation's source selection scheme and challenges the reasonableness of the agency's best value determination. Hillstrom's also contends that the agency improperly accepted a low- or below-cost offer.

We deny the protest.

BACKGROUND

The solicitation, which was issued on October 9, 2009 as a total small business set-aside, sought corrosion control services for C-5, C-17, and KC-10 aircraft, including aircraft exterior washes, aircraft interior cleanings, and aircraft lubrication. RFP at 1; RFP amend. 5, at 3-23. The solicitation anticipated the award of an indefinite-delivery, indefinite-quantity, requirements-type contract with fixed unit prices for a 1-year base term and four 1-year options. RFP amend. 5, at 107-08, 112. The agency estimated the total contract value, including the base term and four

1-year options, to be approximately \$7.7 million. Agency Report (AR), Tab 35, Source Selection Decision Document (SSDD), ¶ 4.

The solicitation announced that the agency would evaluate offerors' technical proposals, pricing, and past and present performance history. RFP amend. 6, at 6. Award was to be made to the proposal that represented the "best value" to the government, with past and present performance history to be considered "significantly more important than price." Id. at 6-7. The solicitation explained that the evaluation process would begin with a determination as to whether or not each proposal received was technically acceptable, reasonably susceptible of being made acceptable, or unacceptable. Id. at 6. The next step in the process was to be a price evaluation and a ranking in order of price of those proposals rated technically acceptable or reasonably susceptible of being made technically acceptable. Id. After that, the agency was to obtain and evaluate offerors' past and present performance information and assign each offeror a performance confidence assessment rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. The solicitation defined substantial confidence as "a high expectation" that, based on the offeror's performance record, the offeror would successfully perform the effort. Id. The solicitation defined satisfactory confidence as "an expectation" that, based on the offeror's performance record, the offeror would successfully perform the effort. Id.

The solicitation provided that the agency would select the awardee as follows:

If the lowest priced technically acceptable offeror is judged to have a Substantial Confidence performance assessment, that offer represents the best value for the government and the evaluation process stops at this point. Award shall be made to that offeror without further consideration of any other offers.

If the lowest priced technically acceptable offeror is judged to have other than a Substantial Confidence performance assessment, the next lowest priced offeror will be evaluated and the process will continue (in order by price) until a technically acceptable offeror is judged to have a "Substantial Confidence" performance assessment or until all offerors are evaluated. The Source Selection Authority shall then make an integrated assessment best value award decision.

Id. at 7.

The agency received four proposals by the solicitation's closing date and evaluated all four of the proposals, including those submitted by Hillstrom's and Empire, as technically acceptable. AR, Tab 35, SSDD, ¶¶ 2, 3. The agency evaluated the pricing offered in each of the four proposals and established a competitive range consisting of the three lowest-priced proposals. Id. ¶ 6. The proposals of both Hillstrom's and Empire were included in the competitive range. Id.

The agency obtained past performance information for the three offerors in the competitive range. AR, Tab 35, SSDD, ¶ 5. After evaluating the information, the agency determined that Hillstrom's previously had performed relevant services on all three of the airframes to be serviced under the solicitation, whereas Empire and the other offeror in the competitive range had performed relevant services on two of the three airframes. Id. The agency concluded that Hillstrom's had performed relevant past efforts that were the "same" as the "magnitude of effort and complexities" identified in the solicitation and assigned Hillstrom's a performance confidence assessment rating of substantial confidence. Id. ¶ 5.c. The agency concluded that Empire and the third offeror in the competitive range had performed relevant past efforts that were "similar to a majority" of the "magnitude of effort and complexities" identified in the solicitation and assigned Empire and the third offeror in the competitive range performance confidence assessment ratings of satisfactory confidence. Id. ¶¶ 5.a, 5.b.

The agency conducted discussions with each offeror in the competitive range and solicited and received final proposal revisions (FPRs) from all three offerors. Id. ¶ 7. The Empire FPR price of \$5,568,014 was the lowest. Id. The Hillstrom's FPR price of \$7,996,677 was the third-lowest. Id.

In the course of the source selection process, the source selection authority (SSA) considered each offerors' pricing and observed that the pricing offered by Hillstrom's represented a significant premium over the pricing offered by Empire.¹ Id. The SSA also considered each offerors' performance confidence assessment information and ratings and concluded that "[t]he recent and relevant past performance information submitted by Empire indicates the Offeror is familiar with the type of work required, is prepared to provide services and has successfully performed these services in the past." Id. The SSA determined that the higher performance confidence assessment rating assigned to Hillstrom's did not justify the price premium and that it was in the "best interest" of the government to make award to "the lowest priced responsible Offeror, Empire." Id.

On September 13, the agency awarded the contract to Empire. Contracting Officer's Statement at 6. On September 16, the agency provided a written debriefing to Hillstrom's. Id. Hillstrom's filed this protest with our Office on September 21.

¹ The SSA's source selection process is documented in the SSDD. See AR, Tab 35, SSDD. The record reflects that the contracting specialist prepared the SSDD and that the SSA concurred with and executed the SSDD. Id. at 10.

DISCUSSION

Hillstrom's contends that the agency deviated from the solicitation's source selection scheme because, as Hillstrom's reads the solicitation, if one or more offerors received a performance confidence assessment rating of substantial confidence, then the agency was required to make award to an offeror that received such a rating. Comments at 1. We disagree.

In considering protests of an agency's source selection decision, we review the record to determine whether the source selection decision was reasonable and consistent with the terms of the solicitation. The Mangi Envtl. Group, Inc., B-401783, Nov. 20, 2009, 2009 CPD ¶ 231 at 3. An agency may not announce in a solicitation that it will use one source selection scheme, and then follow another. See L-3 Commc'ns Titan Corp., B-299317 et al., Mar. 29, 2007, 2007 CPD ¶ 66 at 10.

We read the solicitation as follows: if the offeror with the lowest-priced, technically acceptable proposal received a performance confidence rating of substantial confidence, award would be made to that offeror without further consideration of the other proposals. See RFP amend. 6, at 7. The solicitation, however, also provided that if the offeror with the lowest-priced, technically acceptable proposal did not receive a performance confidence assessment rating of substantial confidence, the agency was to successively evaluate the other offers--in order of price--until a technically acceptable offeror was given a performance confidence assessment rating of substantial confidence or until all offers were evaluated. Id. At one of those two points--i.e., one of the offerors was given a performance confidence assessment rating of substantial confidence, or all of the offerors were evaluated--the solicitation anticipated a best value tradeoff decision between the lowest-priced, technically acceptable proposal and one or more of the other technically acceptable proposals.

The record here reflects that the lowest-priced, technically acceptable proposal did not receive a performance confidence assessment rating of substantial confidence. AR, Tab 35, SSDD, ¶ 8. Therefore, consistent with the solicitation, the agency evaluated other technically acceptable proposals, including the Hillstrom's proposal, and gave Hillstrom's a performance confidence assessment rating of substantial confidence. At this point, the agency made a best value decision. Accordingly, based on our review, the agency's source selection process was consistent with the solicitation's stated source selection scheme.

Hillstrom's also challenges the reasonableness of the agency's best value determination. Hillstrom's argues that the agency's determination was unreasonable because Empire has experience servicing only two of the three airframes to be serviced under the solicitation, whereas Hillstrom's has experience servicing all three airframes. Comments at 1. Hillstrom's further argues that the best value determination was unreasonable because the solicitation provided that past and present performance history was significantly more important than price, RFP

amend. 6, at 6, yet the agency made award to an offeror that received a lower performance confidence assessment rating than Hillstrom's received. Id. Thus, in Hillstrom's view, the agency improperly placed too much weight on Empire's lower price.

In a best value procurement, such as this one, it is the function of the SSA to perform a price/technical tradeoff to determine whether one proposal's technical superiority is worth a higher price. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8. Even where price is the least important evaluation factor, an agency properly may select a lower-priced, lower-rated proposal if the agency reasonably concludes that the price premium involved in selecting a higher-rated, higher-priced proposal is not justified in light of the acceptable level of technical competence available at a lower price. Id. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Id. Thus, a protester's disagreement with an agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, do not establish that the evaluation or source selection was unreasonable. Id.

Here, the SSA determined that Empire's lower-priced proposal was most advantageous to the government, considering both past performance and price. AR, Tab 35, SSDD, ¶ 8. In making this tradeoff decision, the SSA recognized the price differential between the higher-rated, higher-priced proposal of Hillstrom's and the lower-rated, lower-priced proposal of Empire. Id. The SSA determined that, notwithstanding the substantial confidence rating assigned to Hillstrom's, the price premium involved with selecting Hillstrom's for award was not justified given that the performance risk involved with selecting Empire for award was acceptable. Id.

We think that this decision represents a reasonable exercise of the SSA's judgment, and we find no basis in the record to question the SSA's selection of Empire's proposal as most advantageous to the government. See Aegis Defence Servs., Ltd., B-403226, et al., Oct. 1, 2010, 2010 CPD ¶ 238 at 2, 10 (denying protest where agency selected offeror with neutral past performance rating rather than offeror with outstanding past performance rating, where award to the latter would involve a price premium, and where past performance was significantly more important than price); General Dynamics-Ordnance & Tactical Sys., supra, at 8-10 (denying protest where agency selected a lower-priced, lower-rated offeror for award under solicitation providing that past performance was significantly more important than price); Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 11 (denying protest where agency selected offeror with lower price and lower past performance score than protester, where cost/price was the least important evaluation factor).

Finally, Hillstrom's contends that the low price offered by Empire indicates an "almost assured failure" on the part of Empire during performance, and, therefore, the award to Empire is not in the government's best interest. Protest at 1. This

contention amounts to an allegation that the agency improperly accepted a low- or below-cost offer. There is, however, no prohibition against a procuring agency accepting a low- or below-cost offer on a fixed-priced contract, including a fixed-price requirements contract such as the one in this procurement. See Triple H Servs., B-298248, B-298248.2, Aug. 1, 2006, 2006 CPD ¶ 115 at 1, 2; Clearwater Instrumentation, Inc., B-286454.2, Sept. 12, 2001, 2001 CPD ¶ 151 at 5 n.3; SatoTravel, B-287655, July 5, 2001, 2001 CPD ¶ 111 at 4 n.3. Further, to the extent Hillstrom's contends that Empire should have been deemed non-responsible, by awarding a fixed-price contract to an offeror, the contracting agency has necessarily determined that the offeror is responsible, a determination which our Office will not review absent a showing of possible bad faith or misapplication of definitive responsibility criteria, neither of which is present here. See SatoTravel, supra, at 3, n.3; Wright Tool Co., B-276416, June 10, 1997, 97-1 CPD ¶ 210 at 3-4.

The protest is denied.

Lynn H. Gibson
Acting General Counsel