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Decision

Matter of: People's Accident Information Service, Inc., d/b/a Securit

File: B-404211

Date: January 18, 2011

Amy L. O'Sullivan, Esq., Elizabeth W. Newsom, Esq., and Gunjan R. Talati, Esq.,
Crowell & Moring LLP, for the protester.

Mark J. Fink, Esq., and Heather M. Spring, Esq., Cozen O'Conner, for AlliedBarton
Security Services, LLC, an intervenor.

James I. Wilson, Esq., Smithsonian Institution, for the agency.

Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly failed to evaluate offerors' proposed prices to determine whether they understood the requirements of the solicitation is denied where the protester fails to allege or demonstrate that there were technical weaknesses in the proposals that would have been revealed by such an analysis.

DECISION

People's Accident Information Service, Inc., d/b/a Securit (Securit), of Flushing, New York, protests the award of a contract by the Smithsonian Institution (SI) to AlliedBarton Security Services, LLC, of Arlington, Virginia, under request for proposals No. F10SOL10038, for unarmed security guard services at various locations in Washington, D.C. and New York. Securit asserts that the agency misevaluated proposals in response to the solicitation.

We deny the protest.

The RFP contemplated the award, on a "best value" basis, of a firm, fixed-price contract, for a base year with four, 1-year options, to provide unarmed security guard services at numerous locations in Washington, D.C. and New York. Firms were advised that the agency would evaluate proposals considering price and five non-price considerations. In performing its evaluation, the agency used a point scoring scheme in which it assigned a total of 80 possible points to the proposals for non-price considerations, and 20 possible points to price. The non-price considerations

were: management plan (20 possible points); resource planning (15 possible points); experience (15 possible points); leadership (15 possible points); and flexibility (15 possible points).

The RFP required offerors to submit a technical proposal that responded to the solicitation’s requirements and the evaluation criteria outlined above. RFP at 59-60. Separately, the RFP required offerors to submit a price proposal. The price proposal was to include a worksheet showing lump-sum prices for each of the contract’s 5 potential years, and also price worksheets that detailed the offeror’s prices in terms of the Service Contract Act (SCA) wage rate categories¹, the unburdened SCA wage rates used by the offeror, hourly prices charged to the government (that is, the sum of the SCA wage rate plus the offeror’s burden), and the annual, extended price, by labor category and location, for each of the facilities covered by RFP. RFP Attach. J-6. These worksheets specified the number of hours annually for guards and supervisors in each of the various locations for contract performance, and firms were not permitted to deviate from the RFP’s specified staffing.

The agency received five proposals in response to the RFP. The agency evaluated the proposals and assigned the following scores² to the proposals:

Offeror	• Tech. Score	• Price Score	• Total Score	• Price³
AlliedBarton	• 80	• 19.5	• 99.5	• \$5,118,276.80
Offeror A	• 79.51	• 19.71	• 99.23	• \$5,062,366.40
Offeror B	• 77.64	• 20	• 97.64	• \$4,990,090.56
Offeror C	• 75.27	• 19.99	• 95.26	• \$4,993,439.20
Securit	• 76.29	• 17.49	• 93.78	• \$5,706,154.80

¹ The contract contemplates only two categories of personnel, guards and guard supervisors, both of which are covered by the SCA wage rate determination that was included in the RFP.

² The agency normalized the technical and price scores, assigning the maximum number of points to the highest-rated/lowest-priced proposals and assigning proportionately lower scores to the proposals that were rated lower technically/higher in price.

³ The record shows that, for award purposes, the agency only considered the prices for the base year of the contract.

Agency Report (AR), exh. I, at 9. On the basis of these evaluation results, the agency made award to AlliedBarton, finding that the firm's proposal represented the best value to the government. Id. After being advised of the agency's award decision and receiving a debriefing, Securit filed this protest in our Office.

Securit asserts that the agency's price evaluation was inadequate. According to the protester, the agency was required to conduct a price realism evaluation. The protester maintains that, had the agency done this, it would have discovered that the awardee's prices were unrealistically low. In this connection, Securit points out that the awardee's proposal included no detail relating to the build up of its burdened hourly rates and, consequently, there was no way for the agency to evaluate the awardee's proposal for price realism. Securit notes that, in contrast, it included this level of detail in its proposal so that the agency could see the component elements of its prices.

This aspect of Securit's protest is without merit. As a general rule, the utility of evaluating proposed prices for realism in the context of a fixed-price contract is limited to assessing the technical understanding of the offeror and, in appropriate circumstances, assessing the risk inherent in an offeror's proposal. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 3. Here, the RFP did not explicitly call for the agency to perform a price realism evaluation, but instead provided as follows "Price analysis will be performed to evaluate the price proposals, not only to determine whether the proposed prices are reasonable, but also to determine if the Offeror understands the Work." RFP at 60. Thus, offerors were advised by the terms of the RFP that the agency would confine its evaluation of prices to consideration of whether prices were reasonable (i.e. not too high) and reflected an understanding of the work required under the solicitation.

However, there was nothing in the RFP that required offerors to provide information in their proposals relating to the buildup of their burdened hourly rates; rather, offerors were required simply to provide the burdened hourly rates in the pricing tables without further elaboration.⁴ Thus, the fact that AlliedBurton did not include this information in its proposal was unobjectionable.

Moreover, the protester has made no showing that any aspect of AlliedBarton's proposal indicated that the awardee did not understand the solicitation requirements. While the protester generally asserts that AlliedBarton's proposed prices were

⁴ As pointed out by the protester, notwithstanding that the RFP did not require this level of detail regarding their proposed fully burdened rates, Securit did include this information in its proposal. AR, exh. 16, at BATES 3555-87.

unrealistically low, it has offered no objective support for its position. For example, Securit focuses on AlliedBarton's proposed burdened rate for security guards in New York. In this connection the protester asserts that:

To illustrate this [that AlliedBarton's proposed rates are low], AlliedBarton proposed a fully-burdened rate of \$[deleted] for its New York guards. AR Tab 6 at 2109. The minimum wages and fringe benefits required by the Service Contract Act ("SCA") as well as certain mandatory elements of compensation required for the positions pursuant to the Solicitation total \$28.76/hour--only [deleted] less than Allied Barton's total fully burdened rate. AR Tab 16 at 3555.

Protester's Comments, Nov. 22, 2010, at 4. However, the support for this assertion relied on by the protester--exh. 16, at BATES 3555--is a citation to its own proposed pricing rather than some objective requirement of the Service Contract Act or the RFP. Indeed, the record shows that both firms used the same unburdened SCA-mandated rate of \$17.35 per hour for guards in the New York area; thus, the protester has shown no more than that the burden it applies is higher than that applied by the awardee. However, the mere fact that the awardee's proposed fully burdened rate is lower than the protester's fully burdened rate is of no probative value in demonstrating that the awardee's proposed rates reflect its lack of understanding of the requirement.⁵ We therefore deny this aspect of Securit's protest.

⁵ Securit does suggest that there was a flaw in AlliedBarton's technical proposal because it included a table that has a mathematically erroneous summation of the number of full time equivalent employees (FTEs) it was proposing. The table at issue lists FTEs by labor category and facility location for the contract, and then includes a row entitled "total FTEs for this project" which includes a total of [deleted] FTEs. AR, exh. 16, at BATES 2979. However, if the number of FTEs portrayed in the table for all of the facilities is added correctly, it amounts to [deleted] FTEs. Id.

This clearly was a mathematical or typographical error having no affect on AlliedBarton's legal obligation to provide the correct number of FTEs. Its proposal states:

Table 2 [the table at issue] identifies by labor category and location, our proposed Full Time Equivalent (FTE) counts to staff the Smithsonian contract. These FTE counts have taken into consideration all guardmount, breaks, relief, holiday, vacation, and training hours required for each position based on the post hour requirements listed in the Statement of Work.

AR, exh. 16, at BATES 2978 (emphasis supplied). AlliedBarton thus clearly proposed staffing (FTEs) in accordance with the FTE quantities listed in the labor

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Securit originally asserted that, because the RFP included the clause at Federal Acquisition Regulation (FAR) § 52.222-46, Evaluation of Compensation for Professional Employees, the agency was required to evaluate the adequacy of the compensation packages for any professional employees proposed by the offerors. The agency responds that, because the RFP did not call for professional employees, it was an error for it to have included the professional employee compensation clause in the RFP, and there were no professional compensation packages for the agency to evaluate. In response to the agency's position, Securit asserts that it was prejudiced by the inclusion of the clause, and that the agency is required to reopen the acquisition in order to allow it to revise its proposal.

We dismiss this aspect of Securit's protest as untimely. Solicitations that include FAR § 52.222-46 must, as a threshold matter, require meaningful numbers of professional employees. FAR § 22.1103. Personnel covered by the SCA on the one hand, and professional employees on the other hand, are mutually exclusive. See Relief Servs., Inc.; Radiological Physics Assocs., Inc., B-252835.3, B-252835.4, Aug. 24, 1993, 93-2 CPD ¶ 116.

Here, the solicitation sought only two categories of personnel, unarmed security guards and unarmed security guard supervisors. Both categories are specifically covered by the SCA wage rate determination included in the solicitation and, thus, are not professional employees. Since the RFP did not call for professional employees, there would have been no reason for the agency to have included FAR § 52.222-46 in the solicitation. However, since the RFP did include FAR § 52.222-46, this was a patent ambiguity that was apparent on the face of the RFP. To be timely, a protest challenging improprieties that are apparent on the face of a solicitation must be filed prior to the deadline for submitting proposals. 4 C.F.R. § 21.2 (a)(1) (2010). Since Securit did not raise this assertion until after the agency made award of the contract, this aspect of its protest is untimely.

Securit raises various additional arguments relating to the agency's evaluation of its and AlliedBarton's technical proposals. However, we need not consider these assertions in any detail because Securit is not an interested party to advance these arguments. Even if we agreed with all of Securit's assertions, and this resulted in Securit receiving a perfect technical score and the elimination of the awardee's

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category and location sub-elements of the table. Additionally, a review of AlliedBarton's price proposal shows that its price included all of the hours specified in the RFP. AR, exh. 16, at BATES 2930-54. Accordingly, there is no basis for our Office to conclude either that AlliedBarton deviated from the hours called for under the RFP, or that it proposed fewer FTEs than would be necessary to work the required hours.

proposal for award consideration, the record shows that there are two other firms-- offeror A and offeror B--that would be in line for award ahead of Securit because of Securit's relatively high price. AR, exh. I, at 9.⁶ Securit therefore lacks the direct economic interest necessary to maintain these aspects of its protest. 4 C.F.R. §§ 21.0 (a)(1), 21.1 (a).

The protest is denied.

Lynn H. Gibson
General Counsel

⁶ The record shows that the agency ranked the proposals of offerors A and B next in line for award after AlliedBarton. AR, exh. I, at 9. Securit has not challenged the underlying substantive technical conclusions of the agency's evaluators with respect to offeror A or B, nor has it challenged the agency's ranking of the proposals. The absence of any such challenge is significant because the agency expressly asserted during the protest that Securit would not be in line for award, even if its challenges to the agency's evaluation were meritorious. Agency Legal Memorandum, Nov. 12, 2010, at 3-4. Instead, Securit's protest, to the extent it makes any challenge to the evaluation of the other offerors, is confined to a generalization of the price allegations discussed and denied above. Since Securit raised no substantive challenge to the agency's evaluation of the other offerors, and since the record shows that the agency ranked those offerors ahead of Securit, we conclude that Securit is not interested to challenge the agency's technical evaluation of its and the awardee's proposals.