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Decision

Matter of: I.M. Systems Group

File: B-404583; B-404583.2; B-404583.3

Date: February 25, 2011

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Lynn W. Flanagan, Esq., Department of Commerce, for the agency.

Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A procuring agency improperly rejected the protester's low-priced proposal as unrealistic where the agency did not reasonably assess the realism of the protester's labor rates, as required by the solicitation.
 2. Protest challenging the award of indefinite-delivery/indefinite-quantity contracts is sustained where, although the solicitation provided that the agency would assess the realism of offerors' loaded labor rates, the agency did not assess the realism of the awardees' labor rates.
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DECISION

I.M. Systems Group (IMSG), of Rockville, Maryland, protests the rejection of its proposal and the award of contracts to Science and Technology Corporation (STC), of Hampton, Virginia; Riverside Technology Inc. (RTI), of Fort Collins, Colorado; and Global Science & Technology (GST), of Greenbelt, Maryland, under request for proposals (RFP) No. DG133E-10-RP-0038, issued by the National Oceanic Atmospheric Administration (NOAA), Department of Commerce, for scientific and technical support services.

We sustain the protest.

BACKGROUND

The RFP, issued as a small business set-aside, provided for multiple awards of indefinite-delivery/indefinite-quantity contracts for a base year and 4 option years for a broad range of scientific and technical services supporting NOAA's mission areas. RFP § C.1.0. Offerors were informed that fixed-price, time-and-materials, or labor-hour task orders would be issued under the contracts for the required services. The RFP stated that the total value of all orders issued under the contracts would not exceed \$550 million. RFP § B.4.

The RFP provided that award would be made on a best value basis, considering price and the following two factors, in descending order of importance: approach and past performance. The non-price factors, combined, were stated to be significantly more important than price. RFP § M.3. Offerors were also informed that the agency intended to award contracts without conducting discussions. RFP § L.2.

The RFP provided that the prices would be evaluated as follows:

- a. The proposed prices/costs will be evaluated but not scored. The price evaluation will be based on the sum of the fully loaded/burdened labor rates for all labor categories identified in Section B of the solicitation plus the sum of the total prices for the Section J sample tasks.
- b. The price evaluation will determine whether the proposed fully loaded/burdened labor rates for the labor categories set forth in Section B and proposed prices for the Section J sample tasks are realistic, complete, and reasonable.
- c. For proposal evaluation purposes only, the Government may use the results of price/cost realism analysis to adjust the offeror's proposal to an evaluated price/cost to the Government. This may include information from a Government auditing agency, Government technical personnel, and other sources.

RFP § M.3.

With respect to price proposals, the RFP identified 40 labor categories, for each of which offerors were instructed to provide a loaded hourly rate. The offerors' loaded hourly rates were stated to be ceiling rates, from which offerors could elect to propose lower rates on a task-by-task basis. RFP § B.5. Offerors were required to discuss the basis for their labor rates and identify all load factors. In this regard, the RFP required that the fully loaded labor rates reflect total compensation and be fully

inclusive of all costs, such as fringe benefits, overhead, general and administrative expenses, and profit. RFP § L.4(b)(3)(b)(1).

In addition to providing loaded labor rates, the RFP required offerors to provide a price proposal for four sample tasks.¹ For each of the sample tasks, the RFP identified an estimated level of effort and labor categories to perform the tasks. For example, sample task two, which provided for the issuance of a time-and-materials task order for services supporting NOAA’s Geostationary Operational Environmental Satellite-R Series program, identified five labor categories and stated that the level of effort was approximately 11.75 full-time staff. RFP § J.3. The four sample tasks required offerors to price approximately a quarter of the 40 labor categories identified by the RFP.

The agency received ten proposals, including those from the three awardees and IMSG. The protester and one of the awardees, RTI, are incumbent contractors for this work with NOAA. Supp. AR, at 8, n.5. The proposals were adjectively evaluated by the agency’s technical evaluation board (TEB) as follows:²

	Technical Approach	Past Performance
IMSG	Very Good	Very Good
STC	Very Good	Very Good
RTI	Very Good	Very Good
GST	Very Good	Very Good
Offeror B	Acceptable	Very Good
Offeror C	Marginal	Satisfactory
Offeror D	Unacceptable	Unsatisfactory
Offeror E	Unacceptable	Unsatisfactory
Offeror H	Very Good	Very Good
Offeror J	Acceptable	Satisfactory

Agency Report (AR), Tab 12, TEB Consensus Report, 48.

¹ In response to an industry question regarding whether any of the sample tasks reflected on-going work, offerors were informed that the sample tasks were representative of work to be performed under the contracts. RFP amend. 1, at 8.

² The RFP provided that proposals would be evaluated as outstanding, very good, acceptable, marginal, and unacceptable. An outstanding rating was defined as a proposal with numerous significant strengths or numerous strengths, which are not offset by weaknesses. A very good rating was defined as a proposal that offered some strengths that were not offset by weaknesses. RFP § M.3(b).

Offerors' price proposals were separately evaluated by the agency's cost evaluation team (CET). AR at 9. IMSG's proposed prices for the sample tasks were based upon the firm's loaded labor rates (the ceiling rates). In contrast, STC, RTI, and GST based their sample task pricing upon discounts from their proposed ceiling rates.³

In evaluating the cost proposals, the CET used an independent government cost estimate (IGCE) that was based upon the four sample tasks; the total IGCE for this procurement was \$[deleted].⁴ AR at 16; AR, Tab 12, IGCE at 1-4. The CET evaluated offerors' prices to determine whether they were reasonable ("whether the price/cost was acceptable to both the government and the offeror"), realistic ("whether the price/cost estimate was significantly higher or lower than the IGCE"), and complete ("whether the price/cost "lacked nothing essential").⁵ AR at 15; Tab 12, CET Cost/Price Evaluation Report, at 99. For each offeror, the CET added the sum of all of the loaded labor rates for the 40 required labor categories for the five year contract period to the offeror's total price for the four sample task orders, which involved only some of the RFP's labor categories.⁶ IMSG's and the awardees' prices

³ The discounts varied from a "[deleted] discount for [deleted]" offered in one proposal to a range of discounts from [deleted]% to [deleted]% in another proposal, varying by labor category and sample task, without further explanation for their basis. See, e.g., GST's price proposal, Offeror Pricing Model, at 1; RTI's price proposal at 13-17.

⁴ The agency states that the hourly rates used in the IGCE were based on historical data for a number of scientific and technical services contracts that were performed for NOAA by contractors, including IMSG. AR at 16. NOAA also states that the IGCE did not include all of the loaded hourly labor rates for the 40 labor categories because this amount was "considered insignificant in comparison with the total price for all four sample tasks." Supp. Contracting Officer's (CO) Statement at 10.

⁵ The RFP stated that the price evaluation would include a "cost/price realism" analysis, without further explanation as to which type of realism analysis would be performed. The record shows that the agency conducted a price realism, rather than cost realism, analysis.

⁶ For example, with respect to IMSG's proposed price, the CET took the sum for all its loaded labor rates for the 5-year contract period (\$[deleted]) and added that sum to the firm's total price for the 4 sample tasks (\$[deleted]) to obtain a total evaluated price of \$[deleted]. AR, Tab 12, CET Cost/Price Evaluation Report, attach. A, at 1.

were evaluated as follows:

	Price	Reasonable	Realistic	Complete
IMSG	\$(deleted]	Yes	No	Yes
RTI	\$2.8 million	Yes	Yes	Yes
STC	\$2.9 million	Yes	Yes	Yes
GST	\$3.2 million	Yes	Yes	Yes

AR, Tab 12, CET Cost/Price Evaluation Report, at 98-99. The CET found that IMSG's proposed price, although reasonable and complete, was not realistic, because the protester's price was [deleted] percent lower than the IGCE.⁷ *Id.* at 101.

The TEB and CET reports were reviewed by the agency's source evaluation board (SEB). The SEB disagreed with the TEB's assignment of very good ratings for STC's, RTI's, and GST's proposals under the approach factor. Specifically, the SEB concluded that the awardees' proposals, which had no evaluated weaknesses under that factor, should have been assigned outstanding ratings.⁸ Accordingly, the SEB raised the awardees' ratings under that factor and found that these three firms' proposals should be rated outstanding overall.⁹ AR, Tab 12, SEB Report, at 5.

The SEB agreed with the CET's price evaluation. With respect to IMSG, the SEB determined that the protester's price was unrealistic and expressed concern about whether IMSG would be able to "retain quality personnel with what appear to be below industry standard labor rates." *See* AR, Tab 12, SEB Report, attach. 6, Summary of Significant Weaknesses, Deficiencies, and Discussion Items, at 112.

The SEB recommended to the source selection official (SSO) that awards be made to STC, RTI, and GST without conducting discussions. The SSO agreed that the proposals submitted by STC, RTI, and GST, with their "outstanding" overall technical ratings and very low risk ratings, presented the best value to the government. The SSO also agreed that although IMSG proposed a lower price than the awardees, the

⁷ Although the CET in its report states that a "detailed analysis was performed of the overall price in addition to a review of the individual prices for the Section B labor rates and Sample Tasks," *see* AR, Tab 12, CET Cost/Price Evaluation Report, at 101, the contemporaneous record does not include a detailed analysis of the offerors' proposed labor rates.

⁸ The TEB assigned very good ratings to the awardees' proposals under the approach factor, because the evaluators concluded that only proposals with numerous evaluated strengths should be evaluated as outstanding.

⁹ The SEB Report states that the SEB and TEB discussed this change in technical ratings but there is no documentation of this discussion in the record.

protester's price was "unrealistically low, increasing risk to the government related to obtaining quality personnel." AR, Tab 15, Source Selection Decision, at 7.

Awards were made to STC, RTI, and GST. Following a debriefing, IMSG protested to our Office.

DISCUSSION

IMSG raises numerous challenges to the agency's technical and cost evaluations and source selection decision. Because, as explained below, we agree with IMSG that NOAA failed to meaningfully consider price in its cost evaluation and selection decision, we sustain IMSG's protest. Given our recommendation to reevaluate the firms' proposed prices and make a new selection decision, we do not address all of IMSG's arguments.

IMSG broadly challenges the agency's price evaluation, complaining that NOAA failed to consider the realism of the firms' proposed hourly labor rates. In this regard, IMSG disputes NOAA's determination that IMSG's proposed labor rates were unrealistically low such that the firm would have difficulty retaining quality staff. IMSG contends that, if NOAA had evaluated the realism of IMSG's proposed hourly labor rates, the agency would have found that IMSG's total price for the sample tasks was low, not due to the hourly rates used, but because IMSG had a \$400,000 clerical error in the second sample task. See Protester's Supp. Comments at 12-13.

IMSG also complains that NOAA's simple comparison of the awardees' total prices for the sample tasks did not reasonably assess the realism of those firms' loaded hourly rates. IMSG argues that the awardees all proposed unexplained discounts from their proposed ceiling rates and that NOAA did not evaluate the realism of the firms' proposed labor rates as discounted. Protester's Comments at 6-7. In particular, IMSG argues that RTI's sample task pricing reflected drastic discounts from the firm's ceiling rates. For example, IMSG contends that RTI's \$[deleted] million price for the second sample task would be approximately \$[deleted] million, if RTI's price were based on its ceiling rates.¹⁰ See Supp. Comments, at 10 n. 30.

NOAA agrees that the RFP provided for a price realism analysis, which it states was for the purpose of determining "whether the price estimate is significantly higher or lower than the IGCE and if the contractor understands the work that needs to be accomplished." AR at 15; see also CO's Statement at 4. The agency contends that it reasonably found IMSG's sample tasks price to be unrealistic because it was much

¹⁰ The IGCE for the second sample task is \$[deleted] million.

lower than the IGCE.¹¹ AR at 16. NOAA also contends that the sum of IMSG's loaded hourly rates (ceiling rates) for the 40 labor categories is much lower than the other offerors, which NOAA contends also shows that IMSG's price was unrealistically low. CO's Statement at 5. With respect to the agency's realism analysis of the awardees' proposed prices and rates, NOAA does not contend that it assessed the realism of the awardees' ceiling rates or the labor rates used in the sample task pricing, but states that the agency found the awardees' price proposals to be fair and reasonable. Supp. AR at 9. In this regard, the agency notes that the actual rates to be paid under future task orders will be established through competition for the task orders and that the agency expects that the awardees would offer price discounts. Id.

The Competition in Contracting Act of 1984 (CICA) requires contracting agencies to include cost or price as a factor that must be considered in the evaluation of proposals. 41 U.S.C. § 253a(c)(1)(B) (2006); Electronic Design, Inc., B-279662.2 et al., Aug. 31, 1998, 98-2 CPD ¶ 69 at 8; see Federal Acquisition Regulation (FAR) §§ 15.304(c)(1), 15.305(a)(1). An evaluation and source selection that fail to give meaningful consideration to cost or price is inconsistent with CICA and cannot serve as a reasonable basis for award. The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 9. It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the 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, the record shows that NOAA did not assess the realism of the firms' hourly labor rates, as required by the RFP. See RFP § M.3. Rather, the record shows that the agency's price evaluation was driven by a mechanical comparison to the IGCE of the offerors' proposed prices for the sample tasks, without any consideration of the realism of the rates used in the sample task pricing.

Realism of IMSG's Labor Rates

As noted above, NOAA concluded that IMSG's proposed price for the sample tasks, which was [deleted] percent less than the IGCE for those tasks, was unrealistically low and that, as a result, there was a risk that IMSG would not be able to retain quality staff at its proposed ceiling rates. See AR, Tab 15, Source Selection Decision, at 7. This judgment, however, was not based upon IMSG's proposed loaded hourly labor rates. As required by the RFP, IMSG provided cost information for its loaded labor rates (as did the other offerors) that, for each labor category, identified a wage

¹¹ In this regard, NOAA acknowledges in its report that IMSG may have made a mathematical error, see Legal Memorandum at 23, but does not assess the impact of that error on IMSG's overall price for the sample tasks.

rate, indirect costs rate, and profit. IMSG explained in its price proposal that the wage/salary rate for each labor category reflected a “[deleted]” wage/salary for that category, based upon such wage rates as those of [deleted].¹² Protester’s Price Proposal, Cost Proposal Methodology and Bases of Assumption, at 1.

The record does not show that IMSG’s labor rates for the labor categories included in the sample tasks were significantly lower than the rates contained in the IGCE.¹³ In fact, with respect to sample task two (the largest of the sample tasks), IMSG’s total price (based upon its year-1 loaded ceiling rates) would appear to be \$[deleted], compared to the government’s estimate of \$[deleted] for this task.¹⁴ In this regard, it is unrebutted in the record that IMSG made a mathematical error in adding its proposed rates, resulting in a sum that was approximately \$400,000 lower than the actual sum of the listed rates.¹⁵ Even applying the agency’s simple analysis of comparing the firms’ total proposed price for the sample tasks to the IGCE, IMSG’s

¹² The protester and agency provide extensive arguments concerning IMSG’s labor category ceiling rates and the firm’s actual labor rates for certain individual employees. We do not find any of this discussion useful, inasmuch as the comparison of the protester’s ceiling rates (which, as explained above, reflect an average rate for each labor category) to actual rates was not evaluated by NOAA during the procurement. In this regard, the RFP did not require the submission of labor rates for individuals, but requested rates for labor categories.

¹³ Inexplicably, the IGCE for the sample tasks contains differing hourly rates for the same labor category. For example, the IGCE identifies the hourly rate for a scientific analyst III as being \$32.43 under sample task one, but identifies the rate as being \$36.00 for the same labor category under sample task two. Similarly, the IGCE identifies a rate for a support scientist II as \$34.00 under sample task two, while showing the rate for a support scientist II as \$36.80 under sample task three. See AR, Tab 12, IGCE, at 2-3.

¹⁴ IMSG calculated its price for sample task two using both year-1 and year-2 loaded labor rates, although this was not requested; IMSG’s second rates reflect a [deleted] percent escalation. The IGCE’s labor rates for this sample task do not provide for a similar escalation, and we have calculated IMSG’s price for sample task two based only upon its year-1 rates to allow for a level comparison.

¹⁵ During the pendency of this protest, we dismissed as untimely IMSG’s supplemental protest ground that the agency refused to allow IMSG to correct its mathematical error. Although we do not address IMSG’s untimely concern that the agency would not allow it to correct its price proposal after the awards to STC, RTI, and GST, we recognize the impact of this error in reviewing the apparent realism of its proposed loaded labor rates.

total proposed price, if corrected for the mathematical error,¹⁶ would have been within [deleted] percent of the IGCE.¹⁷

Here, the RFP provided for a realism evaluation of the firms' proposed loaded labor rates and requested cost information that would allow for such an analysis. NOAA did not perform such an analysis of IMSG's price or rates. That is, in determining that IMSG's price was unrealistically low, such that the firm may not be able to retain quality staff, NOAA did not assess whether IMSG's labor rates were too low, but simply assumed that this was the case without analysis. In this regard, the agency did not evaluate the wage rates that IMSG identified for each labor category or consider IMSG's explanation in its price proposal for how it calculated those rates. In the absence of such an analysis, we cannot say that the agency's conclusion that IMSG's price was unrealistically low was supported by the record.

Realism of Awardees' Labor Rates

We also find that NOAA failed to reasonably assess the realism of the awardees' proposed loaded labor rates.

As described above, the RFP established an evaluation scheme under which the agency would consider the sum of the offerors' ceiling rates over the five-year contract period and the sum of their prices for the four sample tasks. Although the RFP also provided for adding these two sums together, as the agency recognized, the sum of the ceiling rates was insignificant in comparison to the sum of the sample task pricing.¹⁸ See Supp. CO's Statement at 10. The record shows that NOAA's judgments concerning the realism and reasonableness of the offerors' proposed prices were determined by the offerors' sample task pricing.

Here, all the awardees' sample task pricing was based upon the use of discounted labor rates. RTI's proposed prices for the sample tasks were, in particular, based upon labor rates that were substantially discounted from the firm's ceiling rates. For example, under sample task two, RTI identifies its ceiling rate for a scientific analyst III as \$[deleted] but the discount rate it applied for this labor category is \$[deleted]. According to RTI's price proposal, the firm's price for sample task two

¹⁶ The record indicates that if the agency had evaluated the rates, the error would have been found.

¹⁷ The record shows that NOAA found realistic and reasonable proposed prices that were within [deleted] percent of the IGCE. See AR, Tab 12, CET Report, at 100.

¹⁸ Moreover, although this price evaluation scheme was not protested, it is not apparent that the sum of all the labor rates provides any meaningful measure of the realism or reasonableness of proposed rates.

based upon its ceiling rates is \$[deleted] million as compared to \$[deleted] million for its price based upon its discounted rates.¹⁹ See RTI's price proposal at 15.

The record shows that NOAA did not assess the realism of the discounted labor rates, although the firms' proposed sample task pricing was based upon those rates.²⁰ This is particularly troubling here, where NOAA's judgment concerning the realism and reasonableness of the offerors' proposed prices was based only upon a mechanical comparison of the firms' sample task prices to the IGCE. While it is up to the agency to decide upon some appropriate and reasonable method for the evaluation of offerors' proposed prices, an agency may not use an evaluation method that produces a misleading result. R&G Food Serv., Inc., d/b/a Port-a-Pit Catering, B-296435.4 et al., Sept. 15, 2005, 2005 CPD ¶ 194 at 4. The method chosen must also include some reasonable basis for evaluating or comparing the relative costs of proposals, so as to establish whether one offeror's proposal would be more or less costly than another's. Id.; see FAR § 15.405(b) ("the contracting officer's primary concern is the overall price the government will actually pay").

In the absence of any analysis of the realism of the awardees' discounted rates, we have no basis to find reasonable the agency's conclusion that the awardees' sample task pricing was realistic and reasonable. In this regard, we disagree with NOAA that the agency need not be concerned with the realism of the offerors' loaded labor rates, because "any and all task orders to be issued under this contract will be subject to fair opportunity competition among the awardees." See Supp. Legal Memorandum at 22. Contrary to NOAA's apparent belief, there is no exception to the requirement set forth in CICA that cost or price to the government be considered in selecting proposals for award because the selected awardees will be provided the opportunity to compete for task orders under the awarded contract.²¹

¹⁹ Although RTI's price proposal explained how its ceiling rates were calculated, see RTI's price proposal at 2, it did not explain the basis of its discounted rates. See RTI Price Proposal at 3-5.

²⁰ The record does show, however, that the SEB was concerned with the discounted rates and drafted potential discussion questions to the awardees. See AR, Tab 12, SEB Report, attach. 6, Summary of Significant Weaknesses, Deficiencies, and Discussion Items, at 108, 111. As noted above, however, NOAA did not conduct discussions with the offerors.

²¹ Specifically, the Federal Acquisition Streamlining Act of 1994, which codified existing authority to award task and delivery order contracts, did not provide any exception to CICA's requirement that cost or price be considered. See The MIL Corp., supra, at 9.

RECOMMENDATION

We recommend that NOAA reevaluate price proposals, conduct discussions, if appropriate, and make a new source selection decision. In the event NOAA determines that the current awards do not represent the best value, or that additional awards should be made, we further recommend that any improperly awarded contract be terminated for convenience and any new contract be awarded in accordance with the evaluation results. In any event, we recommend that the protester be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2010). IMMSG should submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel