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Decision

Matter of: Rust Consulting, Inc.

File: B-406410

Date: May 18, 2012

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DIGEST

Protest against price realism evaluation of awardees' proposals is denied where the agency determined that the awardees' lower proposed labor hours reflected their technical approaches and were not so low as to present a performance risk, and where the protester has not shown the existence of prejudicial error in the evaluation.

DECISION

Rust Consulting, Inc., of Washington, D.C., protests the Department of Justice's (DOJ) award of contracts to Gilardi & Co., LLC, of San Rafael, California, BMC Group Class Action Services, of Chanhassen, Minnesota, and Garden City Group, Inc., of Lake Success, New York, under request for proposals (RFP) No. DJJE-11-RFP-0721, for federal forfeiture claims administration. Rust primarily asserts that the agency failed to reasonably evaluate the price realism of the awardees' proposals.

We deny the protest.

BACKGROUND

When the U.S. obtains judicial forfeiture of assets under specific statutes, the Attorney General has the authority to distribute certain funds to victims of crime and other claimants. RFP § C.1. The solicitation provided for the award of between three and five indefinite-delivery/indefinite-quantity contracts to provide claims administrative support to the Department of Justice's Criminal Division Federal Forfeiture Program in distributing forfeited funds. In this regard, the contractor will be required to identify and contact potential claimants and victims; inform them of the opportunity to file a claim; receive and evaluate the claims; make recommendations regarding the claim's validity; and, in certain cases, make final disbursement. RFP § C.3. Award was to be made on a best value basis considering two equally-weighted evaluation factors: technical merit (with subfactors for corporate experience and capability, technical approach, management approach, and past performance), and price. RFP §§ M.1.2, M.2.

With respect to the price evaluation, offerors were required to complete tables based on a sample task order that involved 20,000 claimants, 3 mailings before final payment, a telebank, and deployment of a website. In the first table, offerors were to propose hours and fixed hourly rates for 11 specified labor categories. The second table listed five categories--training, travel, materials, telebank, and postage--for which the government would reimburse the contractor's costs. Offerors were instructed to propose multipliers that would be applied against these costs and reimbursed as a handling factor, except for postage which would be reimbursed on a cost-only basis. RFP § L.8.1.4. For purposes of evaluation, the agency calculated a total price by multiplying the proposed rates by the proposed hours, and added that total to the costs proposed for the reimbursable items (multiplied by the handling factor) and the cost of postage. RFP § M.3.¹ The solicitation generally provided that the "failure to provide a realistic, reasonable and complete technical and price proposal may reflect a lack of understanding." RFP § M.1.2. Offerors were specifically advised that the government would "assess the reasonableness and realism of the unit prices and the total evaluated price for performing all services," and would "evaluate the realism and reasonableness of each Offeror's proposed unit prices and multipliers by comparing them to each other and (where available and necessary) other contracts for similar items." Id.

Fourteen offerors responded to the solicitation. Eight offerors initially were removed from consideration either because their offers were noncompetitive as to price, technically unacceptable, or otherwise not among the most highly rated. The remaining six offerors, whose proposals were the highest rated technically, were

¹The proposed labor rates and multipliers were to be used by the contractor to price any task orders it was later issued.

determined to be the most highly-rated offerors overall, with their proposals evaluated as follows:

OFFEROR	TECHNICAL SCORE	PRICE
Gilardi	83	\$1,137,760
REDACTED	77	\$4,119,884
Garden City Group	68	\$2,079,950
Rust	66.3	\$5,364,669
REDACTED	65.6	\$3,859,563
BMC Group	62.3	\$1,107,782

Best Value Recommendation at 3-4. However, before making its best value decision, the agency reviewed the evaluation results and determined that both Rust and RCB were non-competitive as to price. Id. at 5. The agency accordingly considered only Gilardi, Garden City Group, Lockheed Martin, and BMC in its best value analysis; Gilardi, Garden City Group, and BMC were selected for awards. Rust thereupon protested the awards, asserting that the agency failed to perform a price realism analysis as required by the solicitation, and unreasonably evaluated Rust's technical proposal.

PRICE REALISM

Rust argues that the agency failed to perform an adequate price realism analysis in evaluating the awardees' proposals. The focus of Rust's protest in this regard is the number of hours that each of the offerors proposed to perform the sample task on which the price evaluation was based. According to the protester, the awardees proposed too few hours to perform the sample task; while Rust proposed to perform the sample task using **[REDACTED]** hours, Gilardi proposed **[REDACTED]** hours, Garden City **[REDACTED]** hours, and BMC **[REDACTED]** hours. (The government estimate was 780 to 1,000 regular hours, plus 150 overtime hours.) Rust concludes that the price realism analysis conducted by the agency was inadequate because it did not consider the technical evaluation, the labor mix proposed by each of the offerors, or the offerors' specific technical approaches.

Where, as here, a fixed-price contract is to be awarded, the agency generally is not required to conduct a realism analysis; this is because a fixed-price (as opposed to a cost-type) contract, places the risk and responsibility for loss on the contractor. WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 3. However, an agency may, as it did here, provide for the use of a price realism analysis to measure an offeror's understanding of the requirements or to assess the risk inherent in a proposal. The nature and extent of such an analysis are matters within the discretion of the agency, and our review of a realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Id.

Here, the record indicates that, in conducting its price realism analysis, the agency in fact considered the technical approaches of the offerors. Specifically, the price evaluation panel consulted with the technical evaluation panel (TEP) regarding the number of hours proposed by all offerors, including the three awardees. In response, the TEP chairman informed the contracting officer that all offerors proposed an adequate and appropriate labor hour mix (although some offerors, including the protester, proposed excessive hours). Agency Statement, Apr. 11, 2012 at 1-2. In this regard, the solicitation required that an offeror's technical solution describe its proposed use of automated systems, including claim tracking databases or systems, websites and interactive voice response (IVR) systems. RFP § L.8.2.2.3; see RFP § C.4.4.

With respect to the awardees, the TEP panel specifically indicated that the low number of hours proposed overall, and for the program manager and claims clerical support specifically, was consistent with the awardees' more automated approach to performing the work, as reflected in their technical proposals. In contrast, Rust proposed a large number of lower-level claims clerical support hours [REDACTED], with significant program manager oversight, indicating to the agency a more labor intensive, less automated approach. The TEP concluded that the awardees could perform the work with the hours and labor mix proposed based on their technical proposals and approach. Agency Statement, Apr. 11, 2012 at 1-2.² We conclude, therefore, that Rust has not shown that the agency's approach to the price realism evaluation was inconsistent with its obligations under the solicitation.

² Rust argues that the information regarding the input from the TEP was not documented in the contemporaneous record, and thus should not be given any weight. We disagree. In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments and explanations. The Eloret Corp., B-402696, B-402696.2, July 16, 2010, 2010 CPD ¶ 182 at 12. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions so long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs, Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. Here, the contemporaneous record specifically indicated that the TEP found that all offerors proposed a sufficient number and mix of hours to perform the contract based on their technical approach. The agency in the course of the protest simply further explained this conclusion.

Rust, however, asserts that in its price realism analysis, the agency failed to consider that both Garden City Group and BMC based their price proposals on assumptions that were inconsistent with the RFP. In this regard, the solicitation statement of work (SOW) required the contractor to “analyze all claim forms”; “assess the sufficiency of supporting documentation”; “calculate the net pecuniary loss incurred by the victim”; and “contact potential claimants who appear to qualify for participation in the claims fund but whose documentation is lacking in some respect, and request that they supply corrected documentation.” RFP § C.4.4.3. Rust asserts that BMC’s assumption in its proposal, that the “data to be captured from each claim form is expected to include confirmation of employment details and the existence of a signature on the claim form,” is contrary to the solicitation requirement that the contractor analyze and validate each claim. BMC Price Proposal at 2. Rust’s position, however, at a minimum, fails to account for BMC’s further explanation in its price proposal that its pricing was based on the assumptions that “[a]ll data entry will be manually verified and validated to ensure 100% accuracy before it is integrated into the claims administration database,” and “that 5% of the claims are deficient and that BMC will mail deficiency letters.....” Id. Accordingly, it is clear that, when read as a whole, BMC’s price proposal acknowledged the solicitation requirement to analyze and validate the claims.

Rust further asserts that Garden City Group assumed that the sample claims scenario in the solicitation would require a simple claims validation process, imposing few requirements on the contractors. GCG Price Proposal at 33. We agree with Rust that Garden City Group did make assumptions in its price proposal that appear inconsistent with the SOW requirements. Specifically, Garden City Group indicated in its proposal that it assumed with respect to the sample scenario, that “[t]here are no calculations to be performed by GCG. There is a simple claims validation process, such as a check the box or verifying that the claims form document is signed.” Id. This assumption appears inconsistent with the SOW requirements that the contractor analyze all claim forms, assess whether there are any deficiencies, and calculate the pecuniary loss incurred by the victim, RFP § C.4.4.3. As discussed below, however, we do not believe that Rust was prejudiced by this error.

TECHNICAL EVALUATION.

Rust asserts that the agency unreasonably evaluated its technical proposal because it assigned Rust a weakness for proposing a program manager that was also working on 12 other projects. Rust argues that the program manager was not required to be proposed full time, and notes that in its proposal it indicated that the program manager would be involved in those projects for a total of only 360 hours per year.

The evaluation in this regard was unobjectionable. Specifically, we find reasonable the agency concern that Rust's program manager might not be available when needed because he was involved in 12 other projects that were running concurrently. Technical Evaluation Report at 20. Although Rust may have anticipated that its proposed program manager would spend no more than 360 hours on the other projects, the fact that he had obligations for as many as 12 other concurrent projects reasonably could be seen as increasing the risk that unexpected developments with respect to the other projects could require additional attention such as to interfere with satisfactorily managing the DOJ effort here.

PREJUDICE

As noted above, the agency made three awards under the solicitation based on a best value determination conducted among four offerors. Rust was not among those offerors because the agency found that Rust did not propose a competitive price. In this regard, Rust's price was 11th highest out of 14 proposals. While Rust's significantly higher price relative to the awardees largely resulted from its proposal of more hours for the sample task, the fact remains that the agency did not believe that the much more labor intensive approach proposed by Rust was necessary to adequately perform the SOW. In this regard, Rust has made no showing that the sample task could not be performed with significantly fewer than the [REDACTED] hours it proposed.

Further, even if Garden City Group's proposal was downgraded based on an unrealistic price, it does not appear that Rust would be in line for award. Rather, it appears that the fourth offeror [REDACTED] that the agency included in its best value determination--with an evaluated price \$1,505,106 lower than Rust's and a technical score only slightly lower (65.6 versus 66.3 points)--instead would be in line for award. Moreover, aside from the four offerors that were included in the best value determination, there was another offeror [REDACTED] which, although determined to be among the most highly rated offerors, nevertheless was not considered in the best value determination because, like Rust, its price was not competitive. *Id.* at 3-4. This offeror, however, received the second highest number of technical points (77), more than 10 points higher than Rust's technical score (66.3), and also submitted a price that was \$1.2 million lower than the price submitted by Rust. *Id.* It thus appears that this offeror also would be in line for award before Rust. Given that there are at least two offerors who would be in line for award before Rust, Rust has not shown that it was prejudiced by any miscalculation of Garden City Group's price proposal. Alutiiq Global Solutions, B-299088, B-299088.2, Feb. 6, 2007, 2007 CPD ¶ 34 at 7.

The protest is denied.

Lynn H. Gibson
General Counsel