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Decision

Matter of: Alcazar Trades, Inc.; Sparkle Warner JV, LLC

File: B-410001.4; B-410001.5

Date: April 1, 2015

Johnathan M. Bailey, Esq., Bailey & Bailey, PC, for Alcazar Trades, Inc.; and Ross Crown, Esq., Lewis Roca Rothgerber LLP, for Sparkle Warner JV, LLC, the protesters.

Kenneth B. Weckstein, Esq., Brown Rudnick LLP, for REB ROWE Services, LLC, the intervenor.

Leigh Ann Bunetta, Esq., General Services Administration, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency evaluation of protester's price for custodial services as unrealistically low is sustained where the record shows that the agency price analysis simply compared the price to the government estimate and other offerors' prices without considering the protester's staffing approach; a price realism evaluation must consider the unique technical approaches proposed by each offeror and an agency may not mechanically apply its own estimate to an offeror's proposal without considering an offeror's unique approach.

DECISION

Alcazar Trades, Inc. (ATI), of San Antonio, Texas, and Sparkle Warner JV, LLC (Sparkle Warner), of Albuquerque, New Mexico, protest the General Services Administration's (GSA) award of a contract to REB ROWE Services, LLC (REB ROWE), of Reading, Pennsylvania, under request for proposals (RFP) No. GS-08P-14-JA-C-0021, for custodial services at the Denver Federal Center in Lakewood, Colorado. The protesters challenge the evaluation of their respective proposals.

We sustain ATI's protest and dismiss Sparkle Warner's protest.

BACKGROUND

The RFP, issued on May 30, 2014, provided for award of a fixed-price contract, with a 1-year base period and four option years, to furnish custodial services for 23 buildings and 7 guard shacks at the Denver Federal Center. Agency Report (AR) at 2. The RFP was set aside for service disabled veteran owned small businesses. AR, RFP, at 1, 98. The buildings covered by the RFP were previously serviced under two contracts, one with Sparkle Warner as the incumbent, and the other with ATI as the incumbent.

Award was to be made to the offeror whose proposal was the “most advantageous to the government,” considering price and the following non-price evaluation factors: management plan (30 percent of the non-price factors), past performance (30 percent), and experience (40 percent). RFP at 103. Proposals could receive the following ratings under each technical factor: excellent (5 unweighted points for significantly exceeding the standard), very good (4 points for exceeding the standard to some extent), average (3 points for meeting the standard), marginal (2 points), and poor (1 point). RFP at 105. The non-price factors, when combined, were approximately equal to price. Id. Price was to be evaluated to ensure that the Offeror’s pricing was not “unbalanced, unreasonable, or unrealistic.” RFP at 105.

Fifteen proposals were received by the June 6 closing time, including proposals from ATI, REB ROWE, and Sparkle Warner. When the agency subsequently eliminated their proposals from the competition, Sparkle Warner and ATI filed protests with our Office. In response, the agency advised that it would take corrective action, including reevaluating proposals, AR, exh. 6, Corrective Action Notice, resulting in Sparkle Warner’s protest being dismissed as academic and ATI’s protest being withdrawn.

Based on the reevaluation by the source selection evaluation board (SSEB), AR, exh. 13, SSEB Report, the source selection authority (SSA) found the following proposals to be the most highly rated:

	Management Plan	Past Performance	Experience	Overall Technical	Price
REB ROWE	1.5	1.2	1.6	4.3	\$10,097,664
Offeror A	0.9	1.2	1.6	3.6	\$13,086,787
Offeror B	1.2	1.2	1.2	3.6	\$10,146,360
Sparkle Warner	0.9	0.9	1.2	3.0	\$10,116,288
ATI	0.9	0.9	1.2	3.0	\$ 7,645,151

AR, exh. 14, Source Selection Decision Document (SSDD), at 8; SSEB Report at 25-26. The government estimate was \$[deleted]. SSDD at 8.

The SSA concluded that REB ROWE, with the highest overall technical rating and the second lowest price among the most highly rated offerors, offered “the best overall value at a fair and reasonable price.” SSDD at 9. Although ATI’s price was lower than REB ROWE’s, the SSA noted that ATI’s overall technical rating was only 3, and found that its price was unrealistic such as to “put the government at risk if the Offeror tried to perform the services with inadequate funding.” Id. When award was made to REB ROWE, ATI and Sparkle Warner filed these protests after their respective debriefings.

DISCUSSION

ATI Protest

ATI asserts that the agency’s evaluation of its proposal with respect to its price, management plan, and past performance, was unreasonable. We note that the evaluation of an offeror’s proposal is a matter within the agency’s discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing an agency’s evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and applicable procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13.

ATI first challenges the agency’s evaluation of its price as unrealistically low. ATI asserts that in finding its price to be unrealistic, the agency improperly relied on a simple price comparison with the government estimate and other offerors’ prices without taking into account ATI’s particular technical approach.

As a general matter, when awarding a fixed-price contract, an agency is only required to determine whether offered prices are fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). Price realism need not necessarily be considered in evaluating proposals for the award of a fixed-price contract, because these contracts place the risk of loss upon the contractor rather than the government. However, an agency may include in a solicitation a provision which provides for a price realism evaluation for the purpose of assessing whether an offeror’s low price reflects on its understanding of the contract requirements. General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9. Where a solicitation provides for a price realism evaluation, the depth of an agency’s evaluation in this regard is a matter within the sound exercise of the agency’s discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation’s requirements. General Dynamics One Source, LLC; Unisys Corp., supra.

As discussed, under the RFP, price was to be evaluated to ensure that the offeror's pricing was not "unbalanced, unreasonable, or unrealistic." RFP at 105. In this regard, the solicitation required the submission of monthly unit prices for performing specified custodial services at various buildings at the Denver Federal Center. Further, offerors were required to submit "[c]omplete documentation supporting the unit prices proposed in the schedule." RFP at 100. In addition, the solicitation indicated that the agency would evaluate under the management plan subfactor "how the Offeror will manage the performance and staff the facilities to meet contract requirements and ensure that good customer satisfaction will be maintained." RFP at 104.

ATI proposed the lowest price of all offerors at \$7,654,151, while the awardee's proposed price was \$10,097,664 and the government estimate was \$[deleted]. SSDD at 8. In its proposal's pricing narrative, ATI indicated that it was proposing "a minimum of [deleted] permanent employees and up to [deleted] on-call, as needed." AR, exh. 11, Tab 4, ATI Pricing Narrative, at 71. In addition, ATI set forth its proposed pay rates for the various categories of employees. Id. at 75 et seq.

In the agency's written debriefing following the initial elimination of ATI's proposal from the competition in June 2014, the agency listed as one of three significant weaknesses under the management plan factor "Concern with [deleted] employees." Agency Debriefing, June 25, 2014, at 2. According to ATI, GSA explained in a subsequent oral debriefing that its concern with respect to ATI's proposal of [deleted] "permanent employees" was based on its understanding that ATI historically had employed [deleted] staff members in providing custodial services for its portion of the Denver Federal Center, while Sparkle Warner had employed another [deleted] staff members for its portion of the facility. ATI Protest of Exclusion from the Competition, June 30, 2014, at 8. According to ATI, the agency stated that, based on this understanding of the historical staffing, the evaluators projected that 32-38 employees would be required for the consolidated requirement. Id.

In its protest of its initial exclusion from the competition, however, ATI asserted that it was in fact performing with a staff of [deleted] full-time equivalent employees, not [deleted]. ATI also furnished payroll data regarding its staffing, and information regarding occupancy level and factors (e.g., locked areas, high number of "no service" tenant requests, high number of offices where cleaning was by appointment only, and teleworking). According to ATI, this information indicated a reduced requirement for custodial services relative to that which might be expected from the size of the buildings, thus calling into question the agency's estimate of required staffing and supporting ATI's proposed staffing. ATI Protest of Exclusion from the Competition at 7; ATI Supplemental Protest of Exclusion from the Competition, July 7, 2014, at 2-4.

Prior to the due date for its report responding to ATI's protest, GSA announced that it was undertaking corrective action and reevaluating proposals. In its report

prepared after the reevaluation of proposals, the SSEB made no mention of any weakness arising from ATI's proposal of only [deleted] permanent employees when explaining the unweighted rating of 3 (average) assigned to ATI under the management plan subfactor. SSEB Report at 8-9. Likewise, the SSA in her source selection decision did not mention the prior weakness. SSDD at 4. Instead, the source selection decision merely included a comparison of the prices submitted by the most highly rated offerors, including ATI, and the government estimate, leading the SSA to conclude:

Even though [ATI] is also rated a 3 [technical score], their offer is priced so low that the offer is considered to be unrealistic in price realism and reasonableness and would put the government at risk if the Offeror tried to perform the services with inadequate funding. The next higher price of offers evaluated was \$9,577,610.35,¹ which was \$1,923,458.90 higher than [ATI's] price of \$7,654,151.45. Approximately \$2 million or \$400,000.00 per year for the base and four options is a large amount for a firm to absorb. Eight firms out of 13 that were reviewed were priced in the \$10,033,612.60 to \$11,478,544.00 price range. The number of firms offering a price within that range would suggest that the \$10 [million] to \$11 [million] prices offered would [be] the competitive market price that would be fair and reasonable to perform the services required. The savings in awarding to [ATI] would be countered by the less than Very Good understanding of the technical requirements of the services and would NOT be in the best interest of the government.

SSDD at 9.

We find that, under the circumstances here, the above price realism evaluation was unreasonable. Where offerors take a similar approach to meeting the solicitation requirements, our Office has generally not objected to a price realism analysis that focuses on a comparison of an offeror's price to the government estimate and the prices of other offerors. See, e.g., AMEC Earth & Environmental, Inc., B-404959.2, July 12, 2011, 2011 CPD ¶ 168 at 8. Our Office has recognized, however, that a price realism evaluation must consider the unique technical approaches proposed by each offeror, Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 7; an agency may not mechanically apply its own estimates to an offeror's proposal without considering the offeror's unique approach. See generally Lifecycle Construction Services, LLC, B-406907, Sept. 27, 2012, 2012 CPD ¶ 269 at 7-8 n.14; Team BOS/Naples--Gemmo S.p.A./DelJen, B-298865.3, Dec. 28, 2007, 2008 CPD ¶

¹ The \$9,577,610.35 price referenced by the SSA was for an offeror not considered to be among the most highly rated. SSDD at 8.

11 at 12-16; Honeywell Tech. Solutions, Inc.; Wyle Labs., Inc., B-292354, B-292388, Sept. 2, 2003, 2005 CPD ¶ 107 at 11-12.

Here, as set forth in the above contemporaneous reevaluation documentation, the record indicates that GSA determined that ATI's price was unrealistic based solely on a comparison of its overall price to the government estimate and the prices of the other most highly rated offerors. Nothing in the SSEB report, the source selection decision, or any of the contemporaneous evaluation documents furnished by GSA indicates that the determination that ATI's price was unrealistic took into account that ATI's price was based on its unique staffing approach, with a proposed permanent staff of [deleted], significantly fewer than the agency estimate of required staffing (32-38 employees). In these circumstances, the agency's failure to account for ATI's unique staffing approach in the price realism evaluation was unreasonable, and on this basis we sustain the protest.

ATI next challenges the evaluation of its proposal under the management plan factor, asserting that it was inconsistent with its proposal. Again, ATI's proposal received an unweighted consensus rating of 3, or average, under this factor. SSEB Report at 8. No strengths or deficiencies were identified, but the following weaknesses were identified:

Weaknesses: . . . The Management Plan includes only one Project Manager and there is no back-up plan or back-up manager mentioned. They also did not address how the firm would manage the scope of the project and how they would manage the multiple locations. . . . There was not an in-depth management structure mentioned in the proposal. There is a focus on the resumes of specific individuals to meet the PM and supervisor positions, but if something were to happen to one of these individuals, there is no mention of the qualifications of the type of person that would fill the position in their absence.

Id.; see SSDD at 4.

As argued by ATI, the above evaluation was inconsistent in some material respects with its proposal. In this regard, ATI's proposal indicated that it was proposing as project manager its current project manager on the Denver Federal Center contract, stating that she had served as ATI's project manager there since 2007, and prior to that served as executive housekeeper supervising over 21 employees at the 2.2 million square foot Denver Community Hospital. ATI Technical Proposal at 2-3. In addition, ATI indicated that its proposed lead shift supervisor "will also act as Alternate to [the project manager] should the need arise." Id. at 3.

Nevertheless, while ATI's proposal clearly set forth a "back-up plan" for ATI's project manager, ATI has not shown that GSA unreasonably concluded that ATI failed to discuss a back-up for the proposed lead shift supervisor in the event that she was

required to serve as project manager or was otherwise unavailable. See ATI Technical Proposal at 2-3. Nor has ATI shown that GSA unreasonably concluded that ATI's technical proposal, which only discussed the project manager and a single lead shift supervisor, did not set forth "an in-depth management structure" to manage providing custodial services at 23 buildings and 7 guard shacks at the Denver Federal Center. Id.; see AR at 2.

ATI also challenges the evaluation of its proposal under the past performance factor. The RFP provided that:

The Government's sources of information for evaluating past performance will include any Past Performance Questionnaire . . . completed by references and may include, but are not limited, to any and all information provided by the Offeror, inquiries of owner representative(s), and other known sources not provided by the Offeror. The Offeror is responsible for describing how its contracts meet the definition of Similar Services.

A more favorable evaluation will be provided for the offeror's submission of its contract[s] . . . that . . . are more similar as described for the work in the solicitation requirements

RFP at 104.

GSA received past performance information for three of the four contract efforts cited in ATI's proposal. In this regard, GSA received a completed past performance questionnaire (PPQ) regarding ATI's performance of a contract, with a period of performance from 2013 to 2018, to furnish sanitation services at a Department of Veterans Affairs ambulatory care center in Los Angeles, California. ATI received all "excellent" performance ratings, as well as several favorable narrative comments, including "Excellent to work with on Sanitation." Supp. AR, exh. 2, at ATI-3. GSA also received a completed PPQ regarding ATI's performance of a contract, with a period of performance from 2011 to 2015, to furnish general housekeeping and conference services at two Nuclear Regulatory Commission buildings (plus two parking garages) in Rockville, Maryland. ATI again received all "excellent" performance ratings, as well as a favorable comment that it was "supportive courteous and responsive." Id. at ATI-5. Finally, GSA received a completed PPQ and obtained two GSA Contractor Performance Assessment Reporting System (CPARS) reports (covering the period July 2011 to June 2013) regarding ATI's performance of its incumbent contract, with a period of performance from 2011 to current, to furnish custodial services for approximately half of the buildings at the Denver Federal Center. ATI received all "excellent" ratings in the PPQ, predominantly exceptional with some very good ratings in the CPARS, and a number of favorable comments, such as the observation in the PPQ that "[t]hey are very responsive and we continue to work well together." Id. at ATI-4, ATI-7, ATI-8.

ATI's proposal received an unweighted consensus rating of 3, or average, under the past performance factor. SSEB Report at 8. No strengths or deficiencies were assessed, but one weakness was identified:

The Offeror's quality of work on the Denver Federal Center contract has been significantly declining since the last CPARS report dated November 14, 2013. The contractor has not taken necessary steps to satisfactorily perform this performance-based contract. The problem-solving skills and the anticipatory approach to perform on this contract satisfactorily are lacking per the experience of the COR [contracting officer's representative], [deleted]. These weaknesses are outlined in several emails and meeting agendas.

Id. at 9; see SSDD at 4. ATI asserts that the rating of its past performance as average cannot be reconciled with the overwhelmingly favorable past performance information received by the agency, including the "very recent" PPQ for the Denver Federal Center. ATI Comments at 3-4.

We find the agency's past performance evaluation to be unobjectionable. In this regard, an agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. SIMMEC Training Solutions, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4.

Here, the solicitation provided for greater weight to be given to performance on contracts for work more similar to the solicitation requirements here. RFP at 104. While ATI had received predominantly exceptional ratings in the PPQ and CPARS for its performance under its most relevant contract, for its half of the custodial services requirement at the Denver Federal Center, the record here indicates that the quality of ATI's performance on this contract had recently materially declined. The CPARS for ATIs Denver Federal Center contract were for performance ending in June 2013, while the agency reports that the PPQ, although undated, was received prior to the May 30, 2014, deadline for receipt of proposals, and therefore predated the period in which ATI's performance began to decline, commencing in June 2014. Supp. AR at 1-2. Further, the agency's account of a recent decline in ATI's performance at the Denver Federal Center is supported by contemporaneous documents from late 2014. The first is an August 19, 2014, email from the contracting officer to ATI advising that

I am getting reports from the building managers and [deleted] that performance and professionalism by the Janitorial Staff has dropped on this project. As you know this can affect your Past Performance

rating. We would like to know what you plan on doing to correct this situation.

Supp. AR, exh. 2, ATI-2. The second contemporaneous document is a September 9, 2014, email from the contracting officer to ATI, scheduling a follow-up meeting regarding “[p]erformance concerns” on the incumbent contract. Id., ATI-1. The attached agenda sets forth the agency’s concern with ATI’s “cyclical performance,” that is, “[g]ood one week, bad the next[,] thinking GSA is not going to inspect the entire building.” Id. The agenda also notes a “[l]ack of professionalism from custodial staff,” including, e.g., “on the phone” while working, “[s]cows,” “going behind GSA” to loosen safety requirements, lack of proper supplies, and an “[a]pppearance of always being on break.” Id.

While ATI denies that its performance at the Denver Federal Center has generally declined, it concedes that “there was a decline in morale over the news of the protest and upcoming threat of employees retaining their jobs.” ATI Supp. Comments, Declaration of ATI Account Manager at 2. Further, we find that the contemporaneous record supports the agency’s position that there has been a recent, material decline in performance at the center. In these circumstances, given this very recent documented, material decline in performance on ATI’s most relevant contract, for approximately half of the solicited custodial requirement, we cannot conclude that the agency was unreasonable in rating ATI’s past performance as only average, notwithstanding more favorable prior performance on this contract or on other less relevant contracts.

Sparkle Warner Protest

Sparkle Warner challenges the evaluation of its past performance, for which it received a rating of 3 (average), under the past performance factor. SSEB Report at 15. In particular, Sparkle Warner challenges the significance of reports of problems in its past performance relied on the agency, asserting that the reports were “erroneous.” Protest at 7-8; Comments at 3-7.

Prejudice is an essential element of every viable protest, and we will not sustain a protest when it is clear from the record that a protester has suffered no prejudice as a result of an agency evaluation error. A-Tek, Inc., B-404581.3, Aug. 22, 2011, 2011 CPD ¶ 188 at 10. We conclude that Sparkle Warner has not demonstrated prejudice with regard to this protest ground since, even if its past performance were to receive the highest possible unweighted rating of 5, or excellent, its overall technical rating would be increased to only 3.6. See Intervenor Comments at 17 n.12. Even with this increase, however, Sparkle Warner would still have a substantially lower technical factor rating than the awardee, as well as a higher price. Accordingly, we conclude that even if Sparkle Warner’s challenge to its past performance evaluation has merit, the protester would still not be in line for award. Sparkle Warner’s protest therefore is dismissed.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that GSA unreasonably evaluated the realism of ATI's low price, failing to account for ATI's unique staffing approach. In addition, we find that ATI's management subfactor rating was at least partially based upon the mistaken belief that ATI had not proposed any backup for its project manager.

Again, prejudice is an element of every viable protest. See, e.g., Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10. Here, it is unclear precisely how much impact GSA's unsupported concern regarding a back-up for ATI's project manager had on its assessment of the technical quality of the firm's proposal. The record, however, indicates that the finding that ATI's price was unrealistically low was a significant factor in the SSA's discounting of ATI's lower price in the tradeoff decision on the basis that the unrealistically low price would lead to risk for the government "if the Offeror tried to perform the services with inadequate funding." SSDD at 9. We cannot say whether the SSA nevertheless would still have determined that REB ROWE's proposal justified the payment of a price premium if the agency had conducted a proper price realism evaluation. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See J.R. Conkey & Assocs., Inc. dba Solar Power Integrators, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 10; Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that ATI has established the requisite competitive prejudice to prevail in a bid protest.

We recommend that GSA reevaluate proposals, consistent with our decision, and, if appropriate, conduct discussions and obtain revised proposals. The agency also should make a new award decision, supported by adequate documentation. We also recommend that GSA reimburse ATI the costs of filing and pursuing its protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d)(1). ATI 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).

ATI's protest is sustained, and Sparkle Warner's protest is dismissed.

Susan A. Poling
General Counsel