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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: WW Contractors, Inc.

File: B-410825

Date: February 26, 2015

Keith Barker, WW Contractors, Inc., for the protester.
Lee P. Curtis, Esq., and William J. Bainbridge, Esq., for Aleut Federal Support Services, LLC, the intervenor.
Robert W. Schlattman, Esq., General Services Administration, for the agency.
Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably rejected the protester's proposal for being unbalanced and unrealistic is denied where the record shows that the agency's rejection of the protester's price proposal as unrealistic was reasonable.

DECISION

WW Contractors, Inc., of Baltimore, Maryland, protests the award of a contract to Aleut Facility Support Services, Inc., of Colorado Springs, Colorado, by the General Services Administration (GSA) under request for proposals (RFP) No. GS-08P-14-JB-D-0040 for building operations and maintenance services. WW Contractors challenges the agency's evaluation of the firm's proposal under both the price and non-price evaluation factors.

We deny the protest.

BACKGROUND

The RFP, issued on July 14, 2014, sought proposals to provide operations and maintenance services at 10 federal properties in Colorado. RFP at 14. The RFP contemplated the award of a fixed-price contract for basic services, and fixed-price indefinite-delivery, indefinite-quantity orders for additional services, over a 1-year base period and four 1-year option periods. Id. at 14, 444.

Proposals were to be evaluated on a best-value basis, with tradeoffs between price and the following non-price factors: (1) experience on similar contracts/task orders, (2) past performance on similar contracts/task orders, and (3) management plan. Id. at 448. Experience and past performance were to be of equal importance, and were each of greater importance than management plan. Id. at 448. Non-price factors, when combined, were to be approximately equal to price. Id.

Under the experience factor, the agency was to consider the extent of the offeror's experience as the prime contractor for contracts and task orders of similar scope, complexity and size. Id. at 449. Contract/task orders that were more similar in size, complexity, and scope might be evaluated more favorably. Id. Under the past performance factor, the agency was to evaluate the quality of the offeror's past performance, considering similarity of scope, complexity and size. Id. A more favorable evaluation would be provided for references that received higher than satisfactory ratings, were more similar to the solicitation requirements, or both. Id.

The RFP specified various criteria under which past performance and experience references would be considered similar in complexity, including criteria for building mechanical, automation, electrical and plumbing systems as well as green energy components. Id. at 448. For example, experience with building plumbing systems was to include distribution, filtration, water treatment, sump pumps and sewage injectors including use in a high rise facility. Id. The RFP included two attachments, one for the offeror to submit experience information for at least three examples (Attachment 1), and one to be submitted directly to the agency by the references identified by the offeror for use in the past performance evaluation (Attachment 2). Id. at 446. Attachment 1 requested information about the contract/task order, and specifically asked the contractor to describe how it met the similar complexity and scope definitions in the RFP. Id. at 451.

Offerors were required to submit pricing information for each of the nine contract line item numbers (CLIN) for the base year and option years. RFP at 447; Amendment 3, Standard Form 1449, at 3-11. The RFP warned that offerors whose prices were unbalanced, unreasonable, or unrealistic, might be rejected as unacceptable. Id. The RFP also stated that an offer might be rejected as non-responsive if it was materially unbalanced as to prices for the initial and option periods, explaining that "an offer is unbalanced when it is based on prices which are significantly less than cost for some work, and prices which are significantly overstated for other work." Id. at 13.

The agency received offers from various offerors, including those from Aleut and WW Contractors.¹ Agency Report (AR), exh. 6, Source Selection Decision

¹ Since no protective order was issued in this matter our decision is necessarily general. The agency provided a redacted copy of the agency report to the protester
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Document (SSDD), at 43. As relevant here, the source selection evaluation board (SSEB) rated WW Contractors' proposal as marginal under the experience factor and as average under the past performance factor. AR, exh. 5, SSEB Report, at 72. The proposal was assigned a total weighted technical rating of average. Id.

Under the experience factor, WW Contractors' proposal was assigned one strength and a deficiency because it did not provide sufficient information for the agency to determine if the three submitted experience examples were similar in complexity to the instant requirement. Id. at 73. The SSEB report highlighted that the proposal did not provide sufficient information to show that the firm's experience met the building mechanical and automation system requirements. Id.; see also RFP at 448. With respect to past performance, only one of the protester's three references submitted a questionnaire. Id. at 74. Based on an evaluation of that reference, the SSEB assigned one strength because the reference indicated better than average performance by WW Contractors, but also assigned a significant weakness because the reference did not meet similar scope, size or complexity standards. Id.

The source selection authority (SSA) subsequently conducted her best-value analysis, setting forth her rationale in the SSDD. The record shows that Aleut's proposal received a rating of very good for the non-price factors and submitted a price of \$13,457,629. WW Contractors' proposal received a rating of marginal under the non-price factors and submitted a price of \$13,065,136. AR, exh. 6, SSDD at 43. The SSA concurred with the SSEB's evaluation of the protester's proposal under the experience factor. Id. at 37. She found that each of the protester's three examples were unclear as to whether they satisfied the similar scope requirement, and that each example did not list the building mechanical or automation systems. Id. at 37-38. The SSA noted:

The actual past experience forms were often vague. The chart in the beginning that outlines if definitions were met helps, but doesn't give any specifics making the majority of this portion difficult to see if they are similar in size, scope and complexity. Between the chart and the 3 written experiences, WW meets the experience standard.

Id. at 38. Ultimately, the SSA assigned a composite technical rating of marginal to WW Contractors' proposal. Id. at 39.

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and the intervenor, from which it excluded information proprietary to the protester and information deemed to be source selection sensitive. Our Office was provided a separate unredacted report for our "in-camera" review.

There is no contemporaneous evidence that the SSA considered WW Contractors' proposal as part of her best-value tradeoff decision. Instead, the record indicates that she rejected the protester's proposal for submitting an unbalanced and unrealistic price proposal. Id. at 48. In this regard, the SSA states:

WW Contractors submitted a pricing proposal that was unbalanced and unrealistic. Therefore, their proposal is being rejected. They anticipated the [CLIN] to cost roughly \$2,500/month in option periods 1-4. That is roughly 3% of the monthly cost. When you compare that to other contractors that is significantly lower. The other . . . contractor's percentage ranges from 9.9% to 14.5% with the median being 12.9%. Therefore, their proposal is being rejected.

Id. at 48. GSA notified the protester of its award decision by letter dated October 30. WW Contractors filed this protest after its debriefing.

DISCUSSION

WW Contractors challenges the agency's determination that its price proposal was unbalanced and unrealistic. The firm argues that, even if there was an error in its price proposal, based on the total contract price, including overhead and profit, its proposal "was very viable." Comments at 7. The protester also argues that its past performance and experience are at least equal to that of the awardee and that, as a result, it should have received award based on its lower price. Protest at 1-2. As discussed below, while we do not agree with the agency that the protester's proposed prices were unbalanced, our review of the record gives us no basis to question the agency's rejection of the firm's proposal as unrealistic.

As noted above, the RFP stated that an offer might be rejected as non-responsive if it was materially unbalanced as to prices for the initial and option periods, explaining that "an offer is unbalanced when it is based on prices which are significantly less than cost for some work, and prices which are significantly overstated for other work." RFP at 13. Thus, under the RFP's terms, to find a price unbalanced, the agency had to find both an understatement of price in some respect and an overstatement of price in another. The record does not support a finding that the protester's price is unbalanced. See Ronsons SDVOSB P&L JV-1, B-410605, Jan. 6, 2015, 2015 CPD ¶ 1 at 4.

The agency explains its decision to reject WW Contractor's proposal as follows:

The Contracting Officer was concerned about WW's pricing because even though WW's overall price was not unreasonable, WW's option years prices for the [CLIN] work as compared to its base price for the [CLIN] work and the option year prices for the [CLIN] work from all of the other offerors were significantly understated. She was concerned

that there were significant risks to the Government of WW's nonperformance or poor performance due to WW's unbalanced pricing if it were to be awarded the Contract, and she determined that these risks were unacceptable.

Agency Legal Memorandum and Contracting Officer's Statement (Agency Memorandum) at 7.

While the SSDD bears out the concern that WW Contractors' price for this one particular CLIN for each of the option years was significantly understated, it does not show a concern on the part of the agency that the protester's low price for this one CLIN was accompanied by a commensurately high price in another portion of the firm's price proposal. Moreover, it is not apparent from WW Contractor's price proposal that the significantly understated price for this one CLIN was accompanied by significant overstatement of prices elsewhere in the firm's proposal. See generally AR, exh. 2, WW Contractor's Proposal. Thus, the record does not evidence that the protester's price proposal was unbalanced.

However, the SSA also articulated a concern that the protester's price was unrealistically low with respect to this particular CLIN, and that there was risk of nonperformance or poor performance owing to the protester's low price. See AR, exh. 6, SSDD, at 48. Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring an offeror's understanding of the requirements. IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 10-11. Price realism may also be used by the agency to evaluate whether an offeror can realistically perform its technical solution at the fixed price proposed in order to assess the risk inherent in an offeror's proposed approach. DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 8-9; Triad Int'l Maint. Corp., B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 8. The RFP here provided for such an analysis. RFP at 447.

As noted above, GSA's analysis of WW Contractor's price proposal showed that the relevant CLIN accounted for approximately three percent of the firm's monthly cost of performance during the option years. AR, exh. 6, SSDD at 48. The agency found this amount unrealistically low in comparison to the median cost of 12.9 percent for each of the other offerors. Id. The unredacted report provided to our Office for review confirms the agency's analysis in this regard. Further, a review of the prices submitted by other offerors, as well as historical price data considered by the agency, shows that the CLIN represented a substantial portion of the total scope of work, and that the protester significantly understated, by an order of magnitude, the relevant CLIN price for the option years.

While the protester argues that there was little risk to the government even if it mistakenly submitted a low price for the relevant CLIN because the overall contract

would have remained profitable, such an assertion is not apparent from the firm's proposal.² Protester's Supp. Comments at 4; see generally AR, exh. 2, WW Contractor's Proposal. Moreover, this argument does not address the risk that WW Contractors lacked understanding of the scope of work contemplated by this CLIN; a valid concern when conducting a price realism analysis. See IBM Corp., supra, at 10-11. Based on the record, we have no basis to question the SSA's concern that there were significant risks to the agency of nonperformance or poor performance by WW Contractors due to the firm's price proposal, or to find the rejection of the proposal on this basis unreasonable.

In any event, even if GSA should not have excluded the proposal based on its price evaluation, the protester has not shown that it could have been prejudiced by the agency's actions. See Bannum, Inc., B-408838, Dec. 11, 2013, 2013 CPD ¶ 288 at 4 (prejudice is an element of every viable protest). In this regard, the record shows that the firm's non-price proposal was inferior relative to the proposal submitted by the awardee.

With respect to the evaluation of its own non-price proposal,³ WW Contractors primarily argues that GSA unreasonably failed to consider experience information submitted by the firm. The dispute between the parties centers on information submitted by the protester in its proposal in the form of a chart, articulating the various size and complexity standards set forth in the RFP, followed by a "check" mark, apparently evidencing experience with the particular requirement. AR, exh. 2, WW Contractor's Proposal, at 2; see also RFP at 448 (setting forth the RFP's size, complexity and scope requirements). The agency determined that it could not adequately evaluate whether the three prior contracts submitted by WW Contractors were similarly size, scope and complexity based on the information in the firm's proposal. AR, exh. 6, SSDD, at 38. The protester responds that the RFP did not require the level of detail expected by the agency in its evaluation, such as the make, model and capacity of specific equipment. Protester's Supp. Comments at 2-3. Our review of the record gives us no basis to question the agency's evaluation.

² Even considering WW Contractor's post-protest arguments related to its overall profitability for this contract, it appears that the deficit caused by the firm's understated price for the relevant CLIN would have been more than its anticipated profit for any given option year. Protester's Comments at 7; Protester's Supp. Comments at 4-5. In other words, contrary to the protester's arguments, it appears that the firm would have been performing the contract at a loss.

³ WW Contractors has not meaningfully challenged the evaluation of the awardee's non-price proposal.

Where a solicitation, as here, contemplates a best value tradeoff between price and non-price factors, the agency is not limited to determining whether a proposal is merely technically acceptable; rather, proposals may be evaluated to distinguish their relative quality by considering the degree to which they exceed the minimum requirements or will better satisfy the agency's needs. ViroMed Labs., Inc., B-310747.4, Jan. 22, 2009, 2009 CPD ¶ 32 at 4.

Here, the RFP instructed offerors that the agency would consider the extent of an offeror's experience as a prime contractor for contracts and task orders of similar scope, complexity and size. RFP at 449. It also informed offerors that a more favorable evaluation might result the increasingly similar the contract/task orders are in size, complexity, and scope to the work being procured under the solicitation. Id. Finally, the submittal form specifically asked offerors the question, "How does this contract/task order [meet the] similar complexity definition?" Id. at Attachment 1. In light of the RFP's evaluation scheme, it was reasonable for the agency to expect an offeror to submit specific details as to why and to what extent its experience examples met the RFP's size, complexity, and scope requirements, and reasonable for the agency to downgrade the protester's proposal for failing to do so.

The protest is denied.

Susan A. Poling
General Counsel