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Decision

Matter of: CW Government Travel, Inc.–Reconsideration; CW Government Travel, Inc.; CI Travel; The Alamo Travel Group; National Travel Service; Bay Area Travel; Knowledge Connections

File: B-295530.2; B-295530.3; B-295530.4

Date: July 25, 2005

Lars E. Anderson, Esq., Benjamin A. Winter, Esq., and Julia M. Kiraly, Esq., Venable LLP, for CW Government Travel, Inc.; and Josephine L. Ursini, Esq., for CI Travel, The Alamo Travel Group, National Travel Service, Bay Area Travel, and Knowledge Connections, the protesters.

Marc Stec, Esq., for SatoTravel, an intervenor.

Raymond M. Saunders, Esq., and Maj. Anissa N. Parekh, Department of the Army, for the agency.

Jonathan L. Kang, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging solicitation's price evaluation scheme is sustained where offerors are not required to propose binding transaction and management fees for the services being procured under the solicitation, thereby precluding the agency from meaningfully evaluating proposals' cost to the government, and where the agency has not explained why it cannot request and evaluate this pricing information.

2. Request for reconsideration of prior bid protest decision is denied where new information regarding agency's determination of solicitation's guaranteed minimum amount provides no basis to disturb the decision.

DECISION

CW Government Travel, Inc. (CWGTI), CI Travel, The Alamo Travel Group, National Travel Service, Bay Area Travel, and Knowledge Connections protest the terms of request for proposals (RFP) No. W91QUZ-04-R-0014, issued by the Department of the Army for commercial travel office services under the developmental, automated

Defense Travel System (DTS) program.¹ The protesters primarily contend that the price evaluation scheme of the RFP is flawed. CWGTI additionally requests reconsideration of our decision in CW Gov't Travel, Inc., B-295530, Mar. 7, 2005, 2005 CPD ¶ 59, in which we concluded that the RFP's guaranteed minimum amount was legally adequate.

We sustain the protests in part and deny them in part. We also deny the request for reconsideration.

The RFP anticipates multiple awards of indefinite-delivery, indefinite-quantity (ID/IQ) contracts for Department of Defense (DOD) worldwide travel agent services. The base ordering period is 2 years, with three 1-year option ordering periods. RFP amend. 9, at 22. Subsequent task orders will be competed among the ID/IQ contract awardees. The RFP seeks to consolidate and standardize travel services within DOD under a single procuring activity. The DTS services are intended to replace "traditional" travel services, which require direct communication between government travel customers and travel agents, with an automated, paperless system. However, because of ongoing DTS transition efforts under a separate contract, the contractors will be required to provide both traditional non-automated as well as DTS services. Task orders will be issued for various regions, and the task order amounts will consist of transaction fees paid to contractors for processing travel arrangements and fixed-price monthly management fees for provision of travel support services. During the performance of task orders, individual DOD activities will place travel orders with the contractors which have received task orders; the contractor will process the travel transaction using the ordering activity's funds, and will receive a fee for each transaction processed.

The RFP states that award will be made to responsible offerors whose proposals are "the most advantageous/best value" to the government based on the following factors, in decreasing order of importance: performance risk, technical, extent of participation of small and small disadvantaged business concerns, and price. RFP amend. 9, at 23. The non-price factors, when combined, "are significantly more important than price." Id.

The RFP requires offerors to respond to two sample tasks to evaluate "[o]fferor's capability to perform travel services in accordance with the terms and conditions of the Request for Proposal[s] under the Full and Open solicitation." RFP amend. 10, Sample Tasks, at 1. The first sample task required offerors to respond to work requirements for "Army, Air Force and DOD sites within Europe," and the second

¹ CI Travel, The Alamo Travel Group, National Travel Service, Bay Area Travel, and Knowledge Connections collectively filed a single protest. For ease of reference, we will refer to CI Travel as the protester for this group.

task required responses for “all Marine and DOD sites” in the continental United States.

With respect to price, the RFP contains a price schedule for fixed transaction and management fees but advised offerors not to complete it as part of their proposals: “CLINS in section SF 1449 are to be used for future task orders. Offerors are required to complete the pricing section attached to the sample task.” RFP amend. 8, at question and answer (Q&A) 5. For the sample tasks, however, the agency informed offerors that proposed prices would not be binding for purposes of future task order competitions: “Price will not be binding, nor relevant to the proposed prices offered on the actual task orders; but will only be used for evaluation purposes to select the best value proposals.” RFP amend. 10, Sample Tasks, at 1. In its response to questions posed by offerors, the agency confirmed that the proposed sample task prices would not be binding:

[Question] Reference “Price” for the Sample Task. Does this pricing commit the Offeror to the quoted rates? If yes – is that commitment only to this specific task? How will pricing proposed for the Sample Task be related to pricing requested after award on other tasks?

[Answer] The pricing for the . . . sample tasks is for evaluation purposes only. This pricing does not commit the offeror to the sample task rates for future task orders.

RFP amend. 8, at Q&A 12.

The agency further clarified that “[t]he sample task pricing does not have any relation to the future task order pricing as requirements may differ from sample tasks.” Id. at answer 16.

CWGTI previously filed a protest with our Office on December 10, 2004, challenging the terms of the solicitation on grounds similar to those raised here. The agency informed our office on January 4, 2005 that it would take corrective action with regard to most of the protest grounds, and we dismissed the protest grounds subject to the corrective action as academic. Our office subsequently issued a decision denying the remaining protest ground regarding the legal adequacy of the solicitation’s guaranteed minimum amount. CW Gov’t Travel, Inc., B-295530, Mar. 7, 2005, 2005 CPD ¶ 59. Following the issuance of a revised RFP, CWGTI and CI Travel filed these protests, and CWGTI requested reconsideration of our earlier decision.

DISCUSSION

Price Evaluation

The protesters argue that the solicitation’s price evaluation scheme is flawed because it does not require offerors to propose binding prices, that is, fixed

transaction and management fees that they must honor in task order competitions. Cost to the government under this RFP will essentially be in the form of these transaction and management fees the contractor will charge. The protesters contend that the lack of binding fees precludes the agency from meaningfully evaluating cost to the government, and will permit offerors to “game” the competition by proposing low fees for purposes of evaluation that they do not intend to propose during task order competitions.

Agencies must consider cost to the government in evaluating competitive proposals. 10 U.S.C. § 2305(a)(3)(A)(ii) (2000); AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 22; Health Servs. Int’l, Inc.; Apex Envtl., Inc., B-247433, B-247433.2, June 5, 1992, 92-1 CPD ¶ 493 at 3-4. While it is up to the agency to decide upon some appropriate, reasonable method for proposal evaluation, an agency may not use an evaluation method that produces a misleading result. AirTrak Travel et al., supra, at 22; Health Servs. Int’l, Inc.; Apex Envtl., Inc., supra, at 4. The method chosen must 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. For example, in our decision in S.J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73, we sustained a protest of a solicitation that did not consider price or cost to the government. The solicitation in S.J. Thomas provided for evaluation of offerors’ proposed markups of their costs, but did not consider offerors’ actual underlying labor rates and material costs. The agency in S.J. Thomas explained that its decision to evaluate only markup rates was prompted by the concern that the sample tasks were so abstract that they did not require or allow for binding prices, thus leaving the agency without a meaningful way to evaluate cost to the government. Id. at 4-5. We concluded that this evaluation scheme did not provide for a meaningful comparison of the proposals’ relative costs to the government because it ignored the underlying rates that each offeror would charge and did not take into consideration the mix of labor that performing the work would require. Id. Similarly, in Aurora Assoc., B-215565, Apr. 26, 1985, 85-1 CPD ¶ 470, we sustained the protest where the agency solicited only indirect rate multipliers, and did not consider offerors’ actual direct costs.

We acknowledge that the evaluation of price or cost in the award of an ID/IQ “umbrella” contract can be challenging, particularly in the procurement of services, because the more meaningful price competition may take place at the time individual task or delivery orders are to be issued. Nonetheless, in our view, the way in which sample tasks are to be evaluated under this solicitation does not satisfy the legal requirement to consider cost to the government.² Here, the RFP does not require

² We have previously acknowledged that prices or costs proposed in the context of hypothetical sample tasks in a solicitation for an ID/IQ contract, while somewhat artificial in nature, may permit the government to assess the probable cost of competing offerors—provided that the solicitation takes into account offerors’

(continued...)

offerors to propose the transaction and management fees that an awardee will ultimately charge the government under the ID/IQ contract. The agency has not advanced a rationale for not requesting and evaluating binding transaction and management fees from offerors in a manner similar to other ID/IQ umbrella contracts where, for example, fixed hourly rates are requested and evaluated.³

The agency instead argues that, notwithstanding the lack of binding transaction and management fees, several features of the RFP allow the agency to meaningfully evaluate cost to the government. The agency contends there are sufficient indicia of the reliability of proposed fees because offerors are required to submit explanations for their pricing assumptions, and the agency will evaluate proposals for price realism and reasonableness. *Id.* at 6-7. We find this argument without merit. Requesting information to support proposed transaction and management fees for the purpose of evaluating price reasonableness and realism presumes that the offerors have proposed fees that will be used during contract performance, a presumption that cannot be made here.⁴ Because the sample task pricing is not binding, a price realism and reasonableness analysis based on that pricing provides no meaningful assessment of the likely cost to the government of an offeror's proposal.

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differing technical approaches and meaningfully evaluates the costs or prices underlying their proposals. *See, e.g., S.J. Thomas, supra*, at 5; *SCIEN TECH, Inc.*, B-277805, B-277805.2, Jan. 20, 1998, 98-1 CPD ¶ 33 at 7-8. The agency asserts that two of our decisions approve the use of non-binding price proposals, such as those anticipated by the RFP here. We disagree. The two cases relied upon by the agency to support its argument where our Office denied challenges to agencies' price evaluations, *Aalco Forwarding, Inc. et al.*, B-277241, B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 and *High Point Schaer*, B-242616, B-242616.2, May 28, 1991, 91-1 CPD ¶ 509, in fact involved solicitations which required binding prices, such as labor rates or line-item prices.

³ Indeed, the General Services Administration "Travel Services Solutions" schedule contract contains fixed transaction fees for many travel agent service requirements similar to those under the RFP. *See* GSA Federal Supply Schedule Contract No. 599. Additionally, we note that the Army previously has solicited fixed transaction fees under ID/IQ contracts for travel services. *See, e.g., AirTrak Travel et al., supra; Omega World Travel, Inc.; SatoTravel, Inc.*, B-288861.5 *et al.*, Aug. 21, 2002, 2002 CPD ¶ 149.

⁴ An agency may, of course, evaluate the realism of even non-binding prices to determine an offeror's understanding of an RFP's technical requirements, but that is different from the assessment of cost to the government. Even there, if the offerors know the prices are not binding, the value of a realism or reasonableness analysis based on those prices may be limited.

The agency additionally argues that, because price is the least important of all evaluation factors, “the low relative importance of price in the published evaluation scheme tends to prevent the non-selection of an offeror proposing costs based on its best estimates solely because other offerors propose low prices that they may have not intention of replicating at the task order level.” Agency Supplemental Responses, June 17, 2005, at 6. This argument also lacks merit because, no matter what weight is assigned cost or price in an evaluation, as discussed above, the evaluation scheme must provide some reasonable basis for evaluating or comparing the relative costs of offerors’ proposals. The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 9-10. The statutory requirement that cost to the government be considered in the evaluation and selection of proposals for award is not satisfied by the promise that cost or price will be considered later, during the award of individual task orders. S.J. Thomas, supra, at 4; The MIL Corp., supra, at 9-10. To the contrary, an agency may not eliminate a proposal from consideration for award of an ID/IQ task order contract without taking into account the relative cost of that proposal to the government. S.J. Thomas, supra, at 4; The MIL Corp., supra, at 9-10.

We conclude that the protesters are prejudiced by the RFP’s flawed price evaluation scheme because offerors who propose based on actual intended fees might be excluded from award of an ID/IQ contract in favor of proposals containing lower fees submitted by offerors who do not intend to propose those fees at the task order level. We sustain the protest on this basis and recommend that the agency revise the solicitation to provide a price evaluation scheme that reasonably evaluates cost to the government.

Sample Task Evaluation

The protesters next contend that the solicitation is flawed because the sample tasks do not require offerors to demonstrate the ability to meet all of the requirements of the performance work statement (PWS). The RFP specifies that the agency will evaluate offerors under the past performance and experience subfactors of the performance risk evaluation factor and the technical approach/capability and management approach/capacity subfactors of the technical evaluation factor. RFP amend. 9, at 23. The RFP further explains that certain “PWS requirements are not applicable to the sample task, however, these tasks may be required on actual task orders from the contract.” RFP amend. 11, at 9.

The agency argues that the PWS requirements omitted from the sample tasks are either similar to other required PWS tasks or are so de minimis as to not warrant specific evaluation under the task orders. Agency Response to GAO Questions, June 17, 2005, at 1, 12. For many of the requirements, the agency states that it does not know or have estimates for the anticipated level of work, but assumes that they are insignificant in quantity or cost to the government. Id.

Agency acquisition officials have broad discretion in selecting evaluation factors that will be used in an acquisition, and we will not object to the absence or presence of particular evaluation factors or an evaluation scheme so long as the factors used reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. Olympus Bldg. Servs., Inc., B-282887, Aug 31, 1999, 99-2 CPD ¶ 49 at 3; ViON Corp., B-256363, June 15, 1994, 94-1 CPD ¶ 373 at 10-11. In light of the fact that this is an ID/IQ contract where the omitted PWS elements are still contractual requirements at the task order level, and because the agency anticipates them to have a minimal impact on the cost to the government, we find no basis to conclude that the agency's evaluation scheme is unreasonable.

Lack of Sufficient Information

The protesters next allege that the RFP fails to reasonably describe the scope and purpose of the potential work that will be required under task orders. Specifically, the protesters contend that the RFP is geographically unlimited, and does not provide enough data concerning the volume and complexity of the anticipated work, including DTS requirements.⁵

Generally, a contracting agency must provide offerors sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. AirTrak Travel et al., *supra*, at 12-13. There is no requirement that a competition be based on specifications drafted in such detail as to completely eliminate all risk or remove every uncertainty from the mind of every prospective offeror; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency, provided the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. Braswell Servs. Group, Inc., B-278521, Feb. 9, 1998, 98-1 CPD ¶ 49 at 3. The specifications need not be precise; rather, agency information and estimates are unobjectionable so long as they were established in good faith, based on the best information available, and accurately represent the agency's anticipated needs. Howard Johnson, B-260080, B-260080.2, May 24, 1995, 95-1 CPD ¶ 259 at 3. The fact that offerors may respond to the risk differently in calculating their prices is a matter of business judgment that does not preclude a fair competition. DGS Contract Servs., Inc., B-261879, Oct. 31, 1995, 95-2 CPD ¶ 199 at 2-3.

⁵ The protesters challenge the worldwide scope of the proposed ID/IQ contract, citing our Letters to the Air Force and Army concerning Valenzuela Engineering, Inc., B-277979, Jan. 26, 1998, 98-1 CPD ¶ 51. The agency states that the RFP's scope is tied to the agency's need to provide military travel to and from any point in the world, and we conclude that this rationale is a reasonable basis for the worldwide scope of the ID/IQ contract.

Here, the agency has provided historical performance data from fiscal years 2000 and 2001 regarding the travel requirements that may be expected under the anticipated task orders. Memorandum of Law at 11; RFP amend. 6. If this information is the best information available and accurately represents the agency's anticipated needs, it may be unobjectionable. In light of our recommendation, however, the agency may wish to review whether the RFP data regarding the history of performance requirements are the best information available at the time a revised solicitation is issued.

Ambiguities

The protesters finally argue that the RFP is ambiguous as to whether awardees will be able to obtain equitable adjustments to compensate for fluctuations in exchange rates.⁶ The agency informed our Office that it has clarified that "offerors must factor into their prices any risk they believe they will face due to fluctuation of the value of the U.S. dollar against foreign currencies." Contracting Officer's Supplemental Statement, June 30, 2005. As explained above, such a clearly-disclosed imposition of risk does not render a solicitation improper. The agency's clarification of this issue renders the protest of this alleged ambiguity academic. Since it is not our practice to consider academic questions, this protest issue is dismissed. Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132.

REQUEST FOR RECONSIDERATION

CWGTI requests reconsideration of our decision in CW Gov't Travel, Inc., B-295530, Mar. 7, 2005, 2005 CPD ¶ 59, denying its protest of the adequacy of the RFP's guaranteed minimum. Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision contains errors of either fact or law, or must present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a) (2005). Here, CWGTI contends that new information provided by the agency after the issuance of our decision indicates that the guaranteed minimum, which has remained unchanged in the solicitation, does not meet the requirements of Federal Acquisition Regulation (FAR) § 16.504(b).

An agency may use an ID/IQ contract where it cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period and where it is inadvisable for the government to commit itself for more than a minimum quantity. FAR § 16.504(b); Aalco Forwarding, Inc. et al., supra, at 6. Because an ID/IQ contract does not specify the precise work that will be provided and is not a requirements contract, a specific guaranteed amount or

⁶ The protesters identify several other areas of the RFP that are allegedly ambiguous. We have reviewed these allegations and find that they do not have merit.

quantity is required as consideration to bind the parties. Aalco Forwarding, Inc. et al., supra, at 6. To ensure that a contract is binding, the minimum quantity must be more than a nominal amount, but should not exceed the amount the agency is fairly certain to order. FAR § 16.504(a).

The RFP specifies that the guaranteed minimum for the ID/IQ contract will be \$2,500. RFP amend. 11, at 13. CWGTI argues that new information provided by the agency following our decision indicates that the agency does not intend to order actual goods or services from every awardee, and instead will pay a \$2,500 “consolation prize” to an ID/IQ contract awardee who does not receive a task order. As evidence, CWGTI cites a response by the agency to a question posed by an offeror: “The minimum guarantee amount of \$2,500 will be obligated upon contract awards. If an awardee does not receive a task order within the base period, this amount will be paid to the contract awardee. Once an awardee receives a task order within the base period and the minimum guarantee is met, the Government will deobligate the \$2,500 from the award.” RFP amend. 8, at Q&A 8.

The agency clarifies now that “the Government definitely intends to order at least \$2,500 of services from every vendor who receives a contract award as a result of this acquisition.” Contracting Officer’s Supplemental Statement at 2. Because the agency intends to place orders for services to fulfill the \$2,500 minimum obligation, we believe that this satisfies the requirements of FAR § 16.504(b), and thus find no basis to change our decision in CW Gov’t Travel, Inc., B-295530, Mar. 7, 2005, 2005 CPD ¶ 59. The request for reconsideration is denied.

RECOMMENDATION

From the record, it is clear that the RFP does not provide a meaningful basis to consider offerors’ proposed costs to the government. Accordingly, we recommend that the agency amend the solicitation consistent with our decision. We further recommend that the agency reimburse the protesters the reasonable costs of pursuing their protests of the issue sustained in this decision, including reasonable attorneys’ fees. The protesters’ certified claim for costs, detailing the time expended and the costs incurred on this issue, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained in part and denied in part, and the request for reconsideration is denied.

Anthony H. Gamboa
General Counsel