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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Grove Resource Solutions, Inc.

File: B-296228; B-296228.2

Date: July 1, 2005

Deborah M. Grove for the protester.

Robert J. McMullen, Esq., Department of the Navy, for the agency.

John L. Formica, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's inclusion of the awardee's proposal in the competitive range even though the proposal was unacceptable as submitted was reasonable under the circumstances; the exclusion of technically unacceptable proposals from the competitive range, while permissible, is not required.

2. Agency's price realism analysis of the awardee's proposal was reasonable where the agency determined that the labor rates proposed by the awardee were, among other things, similar to those listed for similar labor categories on the awardee's and other vendors' federal supply schedule contracts, and were sufficient to provide acceptable personnel.

DECISION

Grove Resource Solutions, Inc. protests the award of a contract to Evolvent Technologies, Inc. under request for proposals (RFP) No. N00140-05-R-0003, issued by the Department of the Navy for telemedicine engineering and technical support services for the Naval Medical Information Management Center, Bethesda, Maryland. Grove argues that the agency's evaluation of Evolvent's proposal and selection of it for award were unreasonable.

We deny the protest.

The RFP provided for the award of a time-and-materials contract for a base period of 6-months with four 1-year options. RFP at 23. A statement of work (SOW) described the services to be provided and stated that the contractor would be required to furnish the following staff positions: a project manager/telemedicine systems

engineer, a telemedicine systems engineer—Naval Medical Information Management Center Telemedicine Operations Help Desk Support, and a principal analyst. For each of these positions, the SOW described a “specific skill set” that the personnel was required to have. For example, the project manager/telemedicine systems engineer position was required to have, among other things, “military acquired Knowledge and Experience or appropriate accredited Degree,” “Military Clinical Medical and Dental Experience or equivalent” and “Telemedicine systems expertise.” RFP amend. 4 at 5-6.

The solicitation stated that award would be made to the offeror submitting the proposal determined to represent the best value to the government and that the technical or non-price evaluation factors combined were more important than price. The RFP listed the following technical or non-price evaluation factors: technical approach; corporate experience; past performance; and extent of participation of small businesses, small disadvantaged businesses, women-owned small businesses, and historically black colleges or universities and minority institutions in performance of the contract.¹ RFP at 48. The RFP provided with regard to price that “[u]nrealistic rates, as determined by the contracting officer, may also be considered in risk assessment and the offeror’s overall proposal may be downgraded.” RFP at 49. In addition, the RFP incorporated by reference Federal Acquisition Regulation (FAR) § 52.222-46, Evaluation of Compensation for Professional Employees, which provides for an assessment of each offeror’s ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention. See Engineering & Env’t, Inc., B-271868.3, Sept. 3, 1996, 96-2 CPD ¶ 182 at 7; Planning Sys. Inc., B-246170.4, Dec. 29, 1992, 92-2 CPD ¶ 445 at 2.

The RFP included detailed instructions for the preparation of technical and price proposals, and required, with regard to price, that the offerors complete the price schedule set forth in the solicitation. The price schedule included, among other things, separate contract line items (CLIN) for three staff positions (project manager/telemedicine systems engineer, telemedicine systems engineer, and principal analyst), and an estimated number of hours for each position. For example, CLIN 0001AA listed the position of project manager/telemedicine systems engineer, with an estimated level of effort of 920 hours for the base period of the contract, and offerors were required to insert a unit price per hour and an extended

¹ As to the relative importance of these factors, the RFP stated that technical approach was the most important factor, followed by the corporate experience and past performance factors, which were equal to each other in importance, and then the extent of participation of small businesses, small disadvantaged businesses, women-owned small businesses, and historically black colleges or universities and minority institutions in performance of the contract factor, which was said to be significantly less important than the preceding factors.

price based upon the RFP's estimated level of effort of 920 hours. RFP at 3; RFP amend. 2 at 5. The RFP also advised that "[t]he offeror's price/cost proposal shall support the offeror's technical proposal," and that "[i]f the price/cost proposal does not support the technical proposal, the offeror's overall proposal rating may be downgraded." RFP at 48.

The agency received eight proposals by the RFP's closing date. The proposal submitted by Grove, the incumbent contractor, was evaluated as "highly acceptable" overall at an evaluated price of \$2,546,162, and Evolvent's proposal was evaluated as "acceptable" overall at an evaluated price of \$1,591,680.² Agency Report (AR), Tab 12, Technical Proposal Evaluation Report (TPEP), at 2; Tab 13, Contract Review Board Presentation, at 4, 7, Tab 14, Contracting Officer's Determination of the Competitive Range, at 1. The proposals of only Grove and Evolvent were included in the competitive range.

Discussions were conducted, and revised proposals were requested and received. Grove's revised proposal was evaluated as "highly acceptable" at an evaluated price of \$2,546,162, and Evolvent's revised proposal was evaluated as "acceptable" at an evaluated price of \$1,526,016. AR, Tab 20, Source Selection Decision, at 4. Evolvent's proposal was selected for award as representing the best value to the government, and after requesting and receiving a debriefing, Grove filed this protest.

Grove argues that the agency acted improperly in including Evolvent's proposal in the competitive range. The protester states that Evolvent's initial proposal failed to acknowledge two material amendments to the solicitation and was thus unacceptable as submitted. Grove also argues that Evolvent's proposal was unacceptable because the firm's proposed labor rates were unrealistically low such that Evolvent would be unable to provide staff that satisfies the contract requirements.³ Comments at 2-3; Supplemental Protest at 5.

The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. While exclusion of technically

² Our discussion in this decision is necessarily general because a protective order was not issued in connection with this protest.

³ Grove also appears to challenge the inclusion of Evolvent's proposal in the competitive range on the basis that the agency "had difficulty confirming Evolvent's past performance." Comments at 3. This argument does not provide any basis to question the agency's determination to include Evolvent's proposal in the competitive range. In any event, the record establishes that the agency was able to contact two of Evolvent's four references and determined that Evolvent's past performance was acceptable. AR, Tab 12, TPEP, at 10-11.

unacceptable proposals is permissible, it is not required. Albert Moving & Storage, B-290733, B-290733.2, Sept. 23, 2002, 2003 CPD ¶ 8 at 6. The significance of the weaknesses and/or deficiencies in an offeror's proposal, within the context of a given competition, is a matter for which the procuring agency is, itself, the most qualified entity to render judgment. Our Office will review that judgment only to ensure it was reasonable and in accord with the solicitation provisions, and a protester's mere disagreement with an agency's judgment does not establish that the judgment was unreasonable. Id.

Contrary to the protester's view, there is nothing under the circumstances here that required the exclusion of Evolvent's proposal from the competitive range. As mentioned above, there is no requirement that an agency exclude a proposal that is technically unacceptable as submitted. Here, the record includes a relatively detailed analysis of the agency's decision to include Evolvent's proposal in the competitive range (as well as the agency's decision to exclude the proposals of other offerors). See AR, Tab 13, Contract Review Board Presentation, at 16-17; Tab 14, Contracting Officer's Determination of the Competitive Range. The agency recognized that Evolvent would need to acknowledge its receipt of the amendments in order for its proposal to comply with the terms of the RFP. Moreover, the agency also recognized that Evolvent's proposed labor rates were significantly lower than those proposed by Grove (the other competitive range offeror) and concluded that Evolvent should be requested to provide price information that would allow the agency to assess the realism of the firm's proposed labor rates. See AR, Tab 13, Contract Review Board Presentation, at 15, 17. A fundamental purpose in conducting discussions is to determine whether deficient proposals are reasonably susceptible of being made acceptable. See Aviate L.L.C., B-275058.6, B-275058.7, Apr. 14, 1997, 97-1 CPD ¶ 162 at 8. There is simply no evidence in the record here to show that the agency unreasonably concluded that Evolvent's proposal would have reasonable chance of being selected for award if the firm received discussions concerning its proposal. We conclude that the Navy reasonably included Evolvent's proposal in the competitive range.

Grove also protests that Evolvent's revised prices could not reasonably have been found realistic by the agency, arguing that "Evolvent's total contract costs are so low and unrealistic, that it brings into question whether they can staff the contract with individuals with the skills, experience and Functional Area Management knowledge as called for in the SOW, to perform adequately on this contract." Protest at 4.

Although agencies are required to perform some sort of price or cost analysis on negotiated contracts to ensure that proposed prices are fair and reasonable, where, as here, the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. However, an agency may, as it did here, provide in the solicitation for a price realism analysis for such purposes as measuring an offeror's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor

who is forced to provide goods or services at little or no profit. The depth of an agency's price realism 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 whether the agency acted reasonably and in a way consistent with the terms of the solicitation.

The agency posed written questions to Evolvent during discussions regarding, among other things, its proposal as evaluated under the technical approach factor and its prices as set forth in its completed schedule. According to the agency, "in order to ensure that Evolvent's price [was] realistic," it "requested that [Evolvent] provide a breakdown of [its] proposed labor-hour rates" and "provide contract references, including any [General Services Administration] contracts, where comparable labor-hour rates were charged for comparable labor categories." AR, Tab 13, Contract Review Board Presentation, at 15; Tab 15, Agency Discussion Letter to Evolvent, at 2.

Evolvent responded to the agency's request by providing a price schedule for its Federal Supply Schedule (FSS) contract, copies of invoices showing certain position descriptions, such as "systems analyst" and "systems engineer," as well as the hours billed and billing rate for each position, and detailed cost breakdowns showing, for example, its overhead pool including its overhead labor, facilities allocation, and fringe benefits, as well as its calculated overhead rate. AR, Tab 16, Evolvent Proposal Revisions. Evolvent also provided detailed information regarding the various accounts that comprise its general and administrative rate (G&A), as well as its calculated G&A rate. Id.

The agency reviewed this information, and found, among other things, that Evolvent's proposed hourly rate for "Telemedicine Systems Engineers" represented a reasonable discount from Evolvent's established FSS rate for a systems engineer. AR, Tab 21, Post-Negotiation Contract Review Board Presentation, at 7. In performing its price analysis, the agency also compared Evolvent's proposed rates to the FSS rates of other vendors, as well as the rates proposed by other offerors for this RFP, and determined that "[t]his sampling of roughly similar labor categories demonstrates that Evolvent's pricing is in line with a number of other providers of professional services." Id. at 8. The agency ultimately concluded that "given the existence of Evolvent's GSA pricing, as well as that of several other providers which is within reasonable margins of the proposed Evolvent prices . . . Evolvent's price proposal as revised by the [final proposal revision] is realistic." Id. The agency concluded that Evolvent could successfully complete this effort with the labor prices Evolvent proposed.

The protester challenges the agency's determination that Evolvent's pricing was realistic by repeatedly arguing that Grove as the incumbent contractor has better understanding of the personnel requirements of the solicitation than either Evolvent or the Navy, and that Evolvent's pricing cannot be realistic because it is

approximately 40 percent lower than Grove's. Protest at 2, 3; Protester's Comments at 7, 8. The protester also argues that the agency's reliance in part on the FSS rates of Evolvent and other vendors in performing its price realism analysis was "not appropriate or consistent with the Solicitation terms." Comments at 7. Specifically, the protester complains that the FSS labor categories reviewed by the agency "cover[ed] the broad category of Information Technology Services," rather than the specific positions set forth in the solicitation of telemedicine systems engineer, lead systems engineer, and systems engineer. Id. at 7-8.

As set forth above, Evolvent's revised proposal included detailed cost and pricing information that was reviewed by the agency in performing its price realism analysis. In determining that Evolvent's pricing was realistic, the record reflects that the agency, among other things, compared the rates proposed by Evolvent to the rates for similar positions included on Evolvent's FSS contract as well as the FSS contracts of other vendors, and found that the rates proposed were comparable and thus realistic. The methodology used by the agency here--the comparison of the rates proposed by Evolvent with the FSS prices of Evolvent and other vendors--is consistent with certain of the price analysis techniques set forth in the FAR. See FAR § 15.404-1(b)(2)(iv) (comparison with competitive published price lists) and (vi) (comparison with prices obtained through market research for the same or similar items).

In this regard, we note that both the FAR and our Office recognize that an agency may use prices for the same or similar items or services in determining whether the price for an offered item or service is realistic. See FAR § 15.404-1(b)(2)(iv) (examples of price analysis techniques include the comparison of previously proposed prices and previous government or commercial contract prices with current proposed prices for the same or similar items); Information Spectrum, Inc., B-256609.3, B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251 at 8 (agency's use of the salaries of comparable civil service employees to assess the realism of a private sector offeror's proposed salaries was reasonable). Given that Grove has provided no substantive or detailed explanation as to why the agency's determination that systems engineers are "roughly similar" to telemedicine systems engineers was unreasonable, and the apparent reasonableness of the agency's view given the similarity of the position titles, we believe it was within the agency's discretion to use Evolvent's and certain other vendors' FSS rates for systems engineers as a tool in its price realism analysis.

Additionally, the record reflects that the agency did consider the prices proposed by Grove in its price realism analysis of Evolvent's proposal, and that it was the large difference between the prices proposed that led to the agency's request during discussions that Evolvent submit cost and pricing information to allow the agency to better assess the realism of Evolvent's prices. The fact that Evolvent's prices were lower than Grove's does not alone provide a basis for rejecting or downgrading Evolvent's proposal here; there is no requirement that the agency base its price realism analysis on a comparison of the prices proposed with the incumbent

contractor's proposed pricing. Science & Mgmt. Res., Inc., B-291803, Mar. 17, 2003, 2003 CPD ¶ 61 at 3. Agencies have discretion in determining whether an offeror's proposed prices are realistic, and as explained above, are free to use a number of techniques in assessing price realism.

In our view, the agency reasonably satisfied its obligation under the FAR and the RFP to perform a price realism evaluation, and Grove's mere disagreement with how the agency conducted its price realism analysis for these requirements and the agency's ultimate conclusion that Evolvent's prices were realistic does not establish that the agency's evaluation of the realism of proposed prices or its conclusion that Evolvent's labor rates were sufficient to provide acceptable personnel was unreasonable.⁴

Grove also protests that the agency improperly "continued discussions with Evolvent after the close of discussions with other offerors." Comments at 8.

The record reflects that the agency contacted both offerors by telephone and forwarded written discussion letters to both offerors on February 24, 2005. AR, Tabs 15 and 17, discussion Letters to Evolvent and Grove. These letters stated, among other things, that "discussions are now completed," and that the offerors' proposal revisions in response to the discussions were to be submitted to the agency by March 3. Id. The protester points out that on February 28, 2005--4 days after both Grove and Evolvent had received written discussion letters, but before the due date of March 3 for the submission of revised proposals--the agency communicated with Evolvent by e-mail. Specifically, the record includes a copy of an e-mail from the agency to Evolvent stating that the agency would "like to see some breakdown of [Evolvent's] loaded labor rates (basic direct labor rates, plus fringes and profit) along with your final price revisions." Supplemental Protest, attach., Navy's E-mail to Evolvent (Feb. 28, 2005). The agency explained here that this information would "assist [in the agency's] price evaluation." Id.

⁴ Although unclear, it appears that the protester may be arguing (in the context of the agency's price realism assessment) that the agency's evaluation of Evolvent's technical proposal was flawed in that the agency did not perform a "qualitative review to distinguish between the technical superiority of the staffing offered by one offeror over another." Comments at 5. As set forth above, the record establishes that the agency met its obligations under the solicitation to evaluate the offerors' proposed prices. While it is unclear as to what aspect of the agency's technical evaluation Grove believes is flawed, or under what particular evaluation factor or subfactor that aspect of evaluation would fall, we note that the record establishes that the agency did perform a qualitative evaluation of proposals received, as evidenced by the record of the evaluation and the fact that Grove's proposal received a rating of "highly acceptable" under the technical approach factor while Evolvent's proposal received the lower rating of "acceptable" under the same factor.

By way of clarification, we note that the agency's communications with Evolvent on February 28 cannot be considered or otherwise characterized as post-final revised proposal discussions, given that the communication occurred prior to the submission of revised proposals. Additionally, the record reflects that the agency's communication of February 28 was in essence a reiteration of the agency's previous request during discussions that Evolvent "provide a breakdown of [its] proposed labor-hour rates." AR, Tab 15, Agency Discussion Letter to Evolvent (Feb. 24, 2005), at 2. We thus see no impropriety. Further, we fail to see, and Grove has not explained, how it was prejudiced by the agency's repetition of its written discussions to Evolvent 4 days later. See Saberliner Corp., B-290515.4, Nov. 20, 2002, 2003 CPD ¶ 10 at 6 (prejudice is an element of every viable protest, and our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that but for the agency's actions, it would have had a reasonable possibility of receiving award).

In this regard, Grove only complains with regard to the discussions it received that the agency acted improperly in that it "did not inform [Grove] of the true nature of the competition during discussions—that it would award on the basis of low cost, technically acceptable offer." Supplemental Comments at 6. The protester raises this argument in the context of its contention that the agency had in fact converted the solicitation to one where the award would be made to the offeror submitting the lowest priced, technically acceptable proposal; Grove argues that the agency "should have discussed the fact that [Grove's] price was too high and its proposal exceeded mandatory minimums and would be more competitive if its excesses were removed." Id. at 7. The protester contends that to the extent that the agency adhered to the best value award basis announced in the RFP, its selection of Evolvent's lower-priced, lower-rated proposal was unreasonable because the record allegedly did not show that the agency "did any trade off evaluating the Evolvent proposal versus the additional pluses in the [Grove] proposal." Supplemental Comments at 11.

The record does not support the protester's assertion that the agency effectively converted the RFP to one where award would be made to the offeror submitting the lowest-priced, technically acceptable proposal, or that the agency did not perform a best value analysis in selecting Evolvent's proposal for award. Rather, the record includes a source selection decision memorandum, wherein the agency specifically considered the evaluated strengths of Grove's proposal and their impact on contract performance. For example, the source selection official noted under the most important evaluation factor of technical approach as follows:

[Grove] was rated [highly acceptable] because it provided an in-depth explanation of how it anticipates performing each section of the SOW which demonstrated a thorough knowledge of the work and would lead to a seamless transition with virtually no risk, cost

of re-work, or ramp-up. Evolvent was [acceptable] in that it submitted a tech approach that reflects a satisfactory understanding of the solicitation's requirements, and a good understanding of telemedicine, teleradiology, and Picture Archive and Communications systems. The Contracting Officer has determined that while [Grove's] tech approach would represent a benefit to the Navy, that benefit would not approach the 40% difference in price.

AR, Tab 20, Source Selection Decision Memorandum, at 5. This memorandum compares the relative strengths of Grove's and Evolvent's proposals under each of the evaluation factors set forth in the RFP, and whether the advantages associated with Grove's higher-rated proposal were worth the difference in price. The agency concluded that although Grove's proposal presented a number of advantages, it was not worth the difference in price over Evolvent's lower-rated, lower-priced proposal.

In our view, the agency's source selection decision was reasonable, and demonstrates that the agency did not abandon the stated best value award scheme in selecting Evolvent's proposal for award.⁵ Although Grove clearly disagrees with the agency's judgment, it has not shown it to be unreasonable. Accordingly, Grove's complaint that the agency failed during discussions to inform Grove that award would be made to the offeror submitting the lowest-priced, technically acceptable proposal is without merit, as is Grove's complaint that the agency's best value analysis was not reasonably based or supported by the record.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ In any event, to the extent that Grove is arguing that it was not afforded meaningful discussions with regard to relatively high prices, we note that where, as here, an offeror's price is high in comparison to competitors' prices, the agency may, but is not required to, address the matter during discussions. Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 17; see FAR §§ 15.306(d)(3), (e)(3). Accordingly, if an offeror's price is not so high as to be unreasonable and unacceptable for contract award, the agency may reasonably conduct meaningful discussions without advising the higher-priced offeror that its prices are not competitive. MarLaw-Arco MFPD Mgmt., B-291875, April 23, 2003, 2003 CPD ¶ 85 at 6. Here, since the agency determined that the prices for Grove's proposal were fair and reasonable considering its proposed approach, we do not find that Grove's discussions on this point were not meaningful.