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Decision

Matter of: Crown Title Corporation

File: B-298426

Date: September 21, 2006

Thomas C. Papson, Esq., and Matthew T. Crosby, Esq., McKenna Long & Aldridge LLP, for the protester.

Thomas J. Madden, Esq., and Sharon A. Jenks, Esq., Venable LLP, for Lawyers Advantage Title Group, Inc., an intervenor.

Richard A. Marchese, Esq., Department of Housing and Urban Development, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's award to offeror that submitted lower-rated, lower-priced proposal in a best value procurement is proper where the source selection was based on a reasonable determination that the substantial price premium associated with protester's higher-rated, higher-priced proposal was not justified given the level of technical competence available at the lower price.

DECISION

Crown Title Corporation protests the award of a contract to Lawyers Advantage Title Group, Inc. under request for proposals (RFP) No. R-PHI-00948, a small business set-aside issued by the Department of Housing and Urban Development (HUD) for real estate closing agent services for HUD properties located in Maryland. Crown primarily contends that, since the RFP provided that technical merit was significantly more important than price, the agency should have awarded the contract to Crown based on its higher-rated, higher-priced proposal.

We deny the protest.

The RFP, issued on July 17, 2005, anticipated the award of a fixed-price, indefinite-quantity contract for a base year and 3 option years. RFP at 3, 42. The award was to be made to the firm submitting the proposal found to offer the best value considering technical factors and price. The RFP provided the following equally weighted technical evaluation factors: prior experience (including

subfactors for closings on the sale of HUD-owned or other properties at similar volumes and in similar geographical areas); technical and management approach (including subfactors for state licensing, quality control, office location, and contract operations); past performance; and personnel qualifications (including subfactors for resumes demonstrating relevant experience, and descriptions of key personnel efforts). Id. at 45-48. Together, the technical evaluation factors were to be significantly more important than price; price, however, was to remain a significant criterion for award. Id. at 48. Prices were to be reviewed to determine whether they were “necessary and reasonable,” reflected a clear understanding of the requirements, and were consistent with the methods described in the proposal. Id. at 48.

Eleven proposals were received by the August 15 closing date; six of the proposals were included in the competitive range. Discussions were conducted and final proposal revisions were submitted by November 28. Crown, the incumbent contractor, submitted a proposal rated “excellent” overall with the fourth low total evaluated price of \$[deleted]; Crown proposed a price of \$[deleted] per closing for the base year [deleted]. Lawyers’ proposal was rated “good” overall; the firm proposed the lowest evaluated price of \$[deleted], reflecting a proposed price of \$[deleted] for each closing [deleted].

Both firms’ proposals received favorable technical evaluations. The technical evaluation panel (TEP) rated the Crown proposal “excellent” under all four evaluation factors, reflecting subfactor ratings of mostly “excellent” with some ratings of “good;” the proposal was also assessed as having very low risk. The Lawyers proposal received one rating of “excellent” and three ratings of “good” under the four equally weighted evaluation factors, reflecting ratings of “excellent” and “good” under the subfactors; the proposal was assessed as having low risk. While the TEP concluded that both firms “can perform the work satisfactorily,” the TEP had concerns that Lawyers’ low price for this fixed-price contract did not reflect the level of effort the firm detailed in its technical proposal. TEP Report, Feb. 13, 2006 at 24. The TEP was concerned that the protester’s proposed price might be insufficient to cover its costs of performing the contract and, on that basis, concluded that award to Lawyers was “not the best value for the Government.” Id. at 25. The TEP noted that Crown submitted a “superior technical proposal” and reasoned that even though Crown’s proposal was higher-priced than other proposals received under the RFP, it was lower than the government estimate for the work. Id. The TEP concluded that Crown’s proposal offered the best value. Id.

Upon review of the TEP report, the contracting officer took note of the technical strengths cited for the Lawyers proposal as well as its substantially lower price, which is less than one-fifth of Crown’s evaluated price. The contracting officer also noted that Lawyers reported that it has been performing similar closing agent services for HUD for the last 15 years, and that it is currently performing closings for HUD at low prices similar to those proposed here. The contracting officer had her

staff contact the HUD contracting personnel administering some of Lawyers' current closing agent contracts to confirm the reasonableness of the firm's prices under the current RFP and, in effect, to also assess the firm's understanding of the requirements by reviewing the quality of its performance at those prices. The contracting officer learned that the firm has been successfully performing similar closing agent services, for a similarly high volume of HUD properties in Florida for only \$[deleted] per closing, and for a smaller volume of HUD properties in Northern Virginia for as low as \$[deleted] per closing.¹ In light of the firm's successful performance of the required closing agent services at similarly low or lower prices than it proposed here, the contracting officer concluded that Lawyers had a sufficient understanding of, and the ability to perform, the requirements despite its low price. The contracting officer concluded that the slightly higher-rated "proposal submitted by Crown . . . [did] not merit the additional costs" associated with an award to that firm. Contracting Officer's Source Selection Recommendation, Apr. 10, 2006, at 1-4; Contracting Officer's Statement of Facts at 3, 7. Consequently, the contracting officer advised the source selection authority (SSA) that she did not agree with the TEP's conclusion that Crown offered the best value to the agency. Rather, in light of the technical merit of the Lawyers proposal and its substantially lower price, the contracting officer concluded that the price premium associated with the Crown proposal was not warranted. The contracting officer recommended that award be made to Lawyers as the firm submitting the proposal that offered the best value to the government.

After reviewing the TEP's comparative assessment of the proposals, and the contracting officer's list of comparative strengths of the two firms compiled from the TEP report, including the confirmation that Lawyers is performing similar HUD contracts successfully at similarly low prices, the SSA concluded that the technical distinctions between the proposals were not significant and that an award to Crown would not be worth the significant price premium associated with its proposal. Source Selection Decision Document, undated; Declaration of SSA, July 14, 2006, at 1-2. Finding that the Lawyers proposal offered the best value, the SSA selected Lawyers for award; an award was made to the firm on June 6, 2006. This protest followed.

Crown challenges the reasonableness of the agency's source selection. The protester contends that the contracting officer and SSA improperly converted the procurement to one based on low price among technically acceptable offers instead of following the RFP's provision that technical superiority was to be significantly more important than price.² As explained below, we conclude that the record shows

¹ Lawyers reports that its low pricing for its closing agent services contracts reflects its anticipation of additional revenue [deleted].

² To the extent the protester alleges that during discussions it was misled to believe that its price was too low, we find nothing in the record to support the contention.

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that the evaluation and selection decision here were reasonable and consistent with the RFP.

In reviewing a protest against an agency's evaluation of proposals and award, including tradeoff determinations, we examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. An agency may properly select a lower-rated, lower-priced proposal—even where price is set out in the solicitation as a significantly less important factor than technical merit—where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. Source selection officials are not bound by the recommendations of lower level evaluators but, rather, have the discretion to make price/technical tradeoffs; the extent of such tradeoffs is governed by the test of rationality and consistency with the evaluation criteria. Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. A protester's mere disagreement with the agency's determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

Based on the record here, we find the tradeoff determination and award reasonably based. Our review, as discussed further below, confirms not only the SSA's view of the comparable technical merit of the proposals, but also the reasonableness of the determination that, given the level of technical merit available at a significantly lower price, an award to Crown based on its slightly higher-rated proposal was not warranted.

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Rather, like the other offerors, Crown was asked to explain how it intended to perform at prices well below the government estimate and those of other offerors; we do not agree with the protester that such inquiry conveyed, as Crown contends, that the firm should not reduce its price in its final proposal revision. The protester was simply given the opportunity to review and explain its pricing; the decision to leave its prices unchanged reflects the exercise of the firm's business judgment, not improper conduct by the agency. Professional Landscape Mgmt. Servs., Inc., B-286612, Dec. 22, 2000, 2000 CPD ¶ 212 at 5. Moreover, while the protester generally contends that it would have lowered its price in its final proposal revision, but did not do so solely due to the agency's price inquiry during discussions, there is also no showing in the record that it would have lowered its price to the degree necessary to remain competitive with the awardee's significantly lower price.

The evaluation record here is clear. As the contracting officer points out in her analysis of the TEP report, both firms' proposals presented comparable strengths under each evaluation factor. For instance, under the prior experience factor, where both firms were rated "excellent," each was credited for extensive experience with HUD and other property closings at similar volumes and in similar geographic areas. For the technical and management factor, both firms met state licensing requirements, provided comprehensive quality control plans, set out detailed work strategies, and have several offices in the area. Given the similarity in the noted strengths for both proposals, we find reasonable the contracting officer's conclusion that the difference in technical ratings assigned for the factor ("excellent" for Crown and "good" for Lawyers) does not reflect any material difference in technical merit.

For past performance, Crown's proposal was rated "excellent" and Lawyers' was rated "good." While there is little explanation of the difference in past performance ratings in the record, our review shows that at least two past performance references rated Lawyers "excellent" under each subfactor. Additionally, while one evaluator apparently noted some negative performance information for the firm, the same evaluator also cited numerous strengths for the firm. For the final technical factor, personnel qualifications, the record also supports the SSA's conclusion that the two firms' proposals were comparable in technical merit. Both firms' staff resumes and biographies showed that all proposed key personnel met or exceeded the RFP's experience requirements and that the level of effort proposed was satisfactory for successful performance of the work. While Crown was credited (and rated "excellent") for having personnel committed solely to this project, it is also clear in the evaluation record that Lawyers (rated "good" for the personnel factor) was found to have fully staffed the effort with qualified, experienced personnel, for which its proposal was rated favorably.

It is well-established that adjectival ratings are merely guides to intelligent decisionmaking; they do not mandate automatic selection of a particular proposal. See Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136 at 10. Selection officials must decide whether the different ratings show technical superiority and what that difference may mean in terms of contract performance in determining whether a price premium associated with that superiority is warranted. See Computer Tech. Servs., Inc., B-271435, June 20, 1996, 96-1 CPD ¶ 283 at 6. Here, as discussed above, the SSA performed a comprehensive integrated assessment of the proposals, including review of the TEP's detailed evaluation report and the contracting officer's comparative analysis of the proposals' strengths. Based on that review, the SSA concluded that in light of the technical quality shown by the Lawyers proposal and its significantly lower price, payment of the price premium involved in an award to Crown was not warranted. The record provides no basis to question the reasonableness of that determination.

Crown argues that the agency failed to perform an adequate evaluation of the realism of Lawyers' low price. We disagree. There is no requirement that a realism analysis

be performed when award of a fixed-price contract is contemplated. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 9. This reflects the fact that it is unobjectionable for a firm to submit a below-cost proposal for a fixed-price contract, since fixed-price contracts generally are not subject to adjustment during performance and the contractor, not the agency, bears the financial risk. Id. While an agency may provide in the solicitation for a price realism analysis of fixed-price proposals, the RFP here did not do so. In support of its position that the RFP did require such an analysis, the protester points to the following language in the RFP: “If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.” RFP at 41 (emphasis added). Not only is the concept of “cost realism” ordinarily not applicable in the context of a fixed-price contract, Systems, Studies, and Simulation, Inc., B-295579, Mar. 28, 2005, 2005 CPD ¶ 78 at 5-6, but the language in this provision is clearly conditional in nature.

We recognize, as noted above, that the RFP states that prices were to be reviewed to determine whether they were “necessary and reasonable,” reflected a clear understanding of the requirements, and were consistent with the methods described in the offeror’s proposal. RFP at 48. Consistent with this provision, the TEP and the contracting officer fully considered the issues raised by Lawyers’ low price. Accordingly, we see no basis to conclude that the agency’s consideration of the firm’s understanding of the work based on the firm’s successful performance of similar services at similar prices was unreasonable or was otherwise inconsistent with the price review provision of the RFP.

The protest is denied.

Gary L. Kepplinger
General Counsel