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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Indtai Inc.

File: B-298432.3

Date: January 17, 2007

Robert Brotzman for the protester.

Janice Davis, Esq., Davis & Steele, for Dynamic Systems Technology, Inc, and Daniel R. Forman, Esq., and Peter J. Eyre, Esq., Crowell & Moring, for aXseum Solutions, LLC, the intervenors.

Maj. ChristinaLynn E. McCoy and Capt. James F. Ford, Department of the Army, for the agency.

Nora K. Adkins, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The past performance of proposed subcontractors may properly be considered in evaluating the past performance of an offeror where the solicitation does not expressly prohibit its consideration.

2. Agency performed a sufficient price analysis, which determined the awardees' prices were fair and reasonable based on adequate price competition, and was not required to perform a price realism analysis to ascertain whether there were performance risks associated with awardees' low prices because the solicitation did not provide for such an analysis.

DECISION

Indtai Inc. protests the award of three contracts under request for proposals (RFP) No. W74V8H-06-R-0044, issued by the Department of the Army for non-personal educational support services to assist government professionals in the delivery of adult education services at sites in eight designated regions worldwide.

We deny the protest.

The RFP contemplated award on a "best-value" basis of as many as two indefinite-delivery, indefinite-quantity, labor-hour contracts for each of eight regions. Proposals were to be evaluated under three evaluation factors: technical capability,

past performance, and cost/price. The RFP stated that technical capability was significantly more important than past performance, and that past performance was significantly more important than cost/price. The technical capability factor had six subfactors: understanding of requirement, transition plan, program management, key personnel, quality control, and contingency plan. Past performance information was to be provided by the offerors covering relevant existing and prior contracts over the past 3 years. Price proposals were to be evaluated for price reasonableness.

Fifteen different proposals were received from 13 different offerors in response to the RFP. Eight of the 15 proposals, including those of the awardees, received “excellent” technical capability and “low risk” past performance ratings. Indtai’s proposal received a “low risk” past performance rating but received only a “good” technical capability rating. Indtai’s price for each region was significantly higher than the awardees’ prices, as well as those offered by most of the other excellent, low-risk proposals. The agency made one award per region to the firm offering the lowest-priced proposal, which was rated excellent and low-risk for that region. Regions 1, 2 and 4 were awarded to aXseum Solutions, LLC; regions 3, 6, and 7 were awarded to Evolver, Inc; and regions 5 and 8 were awarded to Dynamic Systems Technology, Inc.

The protester contends that the agency did not conduct a sufficiently detailed analysis of the offerors’ proposals, which was caused by the short time the agency took to complete its evaluation. The procuring agency is in the best position to determine the time necessary to conduct a satisfactory proposal evaluation; our Office will only examine the agency’s evaluation to ensure it was reasonable and consistent with the RFP. IMODCO, B-216259, Jan. 11, 1985, 85-1 CPD ¶ 32 at 3-4. Contrary to the protester’s allegation, as discussed below, based on our in camera review¹, the agency adequately documented its evaluation and award selections, which we find reasonable and consistent with the RFP’s evaluation criteria.²

Indtai challenges the agency’s past performance evaluation, specifically alleging the agency’s ratings for past performance were unreasonable because the agency did not differentiate between prime and subcontractor past performance to give more weight to prime contractor past performance.

¹ Our discussion of the evaluation of the awardees’ proposals, based on our in camera review, is necessarily general because much of the information is proprietary and the protester did not retain counsel who could view this information under a protective order issued by our Office.

² For example, while the protester alleges that the agency’s technical capability factor analysis was a simple count of strengths and weaknesses, the evaluation documentation reflects an in-depth review of the proposals under each of that factor’s subfactors.

The RFP provided:

Past performance evaluation will assess the relative risks associated with an offeror's likelihood of success in performing the solicitation's requirements as indicated by that offeror's record of past performance. . . . When assessing performance risk, the Government will focus its inquiry on past performance of the offeror under existing and prior contracts over the past three (3) years as it relates to all solicitation requirements. The Government will conduct a performance risk assessment based on the quality, relevancy and currency of the offeror's past performance as it relates to the quality of the service, schedule, business relations, management of key personnel, compliance with security requirements, cost management/ performance, and in successfully accomplishing the required effort. Quality of performance is defined as the level of past performance provided which will be used as an indicator of the offeror's likelihood of success. Relevancy is defined as the scope, magnitude, complexity, and similarity of offeror's past performance as it relates to this acquisition.

RFP amend. 3, § M, at 34. The RFP did not specifically address the evaluation of subcontractors' past performance.

The past performance of proposed subcontractors may properly be considered in evaluating the past performance of an offeror where the solicitation does not expressly prohibit its consideration. Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii); Roca Mgmt. Educ. & Training, Inc., B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 5.

In its evaluation, the agency gave the awardees credit for their subcontractors' favorable past performance in determining their performance was low risk. Contrary to the protester's argument, the RFP did not suggest that prime contractor past performance would necessarily be given greater weight than relevant past performance by subcontractors. Our in camera review of the record shows that the awardees' past performance evaluations are documented, give appropriate weight to subcontractor past performance and support the low risk ratings.³

³ This case is distinguishable from Accurate Automation Corp., B-292403, B-292403.2, Sept. 10, 2003, 2003 CPD ¶ 186 at 7-8 (cited by the protester), where the offeror's "management of subcontractors" was the most important subfactor in the past performance evaluation. The solicitation here does not indicate that the past performance evaluation would focus on management of subcontractors.

The protester also argues that the agency's price reasonableness evaluation was not consistent with the RFP. Where, as here, an agency evaluates proposals for the award of a fixed-price contract, in which the government's liability is fixed and the contractor bears the risk and responsibility for the actual costs of performance, the analysis of an offeror's price need only determine that the price offered is fair and reasonable to the government. FAR §§ 15.402(a), 15.404-1(a); SAMS El Segundo, LLC, B-291620.3, Feb. 25, 2003, 2003 CPD ¶ 48 at 8. The government may use various price analysis techniques and procedures to ensure a fair and reasonable price, including the comparison of proposed prices received in response to the solicitation; adequate price competition can establish price reasonableness. FAR § 15.404-1(b)(2)(i); MVM, Inc., B-290726 et al., Sept. 23, 2002, 2002 CPD ¶ 167 at 6.

The RFP provided possible methods for evaluating price reasonableness: information submitted with the offeror's proposal, the comparison of other competitive offers, the independent government cost estimate (IGCE), or on any other reasonable basis. RFP amend. 3, § M, at 35. Of these options, the agency chose to evaluate price reasonableness by comparing price proposals to each other as well as to the IGCE. The agency has adequately documented its price analysis and reasonably determined, based on a comparison of price proposals and comparison of the prices to the IGCE, that the awardees' prices were fair and reasonable. Agency Report, Tab 25, Cost/Price Analysis Report, at 1. While the protester alleges the agency should have conducted a more in-depth analysis of the price proposals, the depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion; we find no legal requirement here for the agency to have done a more in-depth analysis than was undertaken here. See Redcon, Inc., B-285828, B-285828.2, Oct. 11, 2000, 2000 CPD ¶ 188 at 9.

Given that Indtai's price is significantly higher than the awardees' prices, many of the protester's contentions concern the agency's alleged failure to perform sufficient analysis to determine whether the awardees' prices were too low or consider the performance risk of these assertedly low prices. However, the purpose of a price reasonableness analysis is to determine whether the prices offered are higher--as opposed to lower--than warranted. See Dismas Charities, Inc., B-289575.2, B-289575.3, Feb. 20, 2004, 2004 CPD ¶ 66 at 4; Sterling Servs. Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. In contrast, arguments that the agency did not perform an appropriate analysis to determine whether prices are too low such that there may be a risk of poor performance concern price realism not price reasonableness; price realism is not required to be evaluated by the agency unless the solicitation provides for such an analysis. Dismas Charities, Inc., supra. Here, the solicitation did not provide for a cost realism analysis and the agency therefore did not have to perform such an analysis.

The protester's finally challenges its own "good" technical capability evaluation rating. For the reasons discussed below, we find that Indtai is not an interested party eligible to raise this protest ground. A protester is not an interested party where it would not be in line for a contract award even if its protest were sustained,

since it lacks the direct economic interest required by our Regulations to maintain a protest. 4 C.F.R. §§ 21.0(a)(1), 21.1(a) (2006); Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD ¶ 463 at 4. We first note that, as discussed above, Indtai's protest of the past performance and price evaluation was without merit. In addition, Indtai's price is significantly higher than the awardees' prices, as well as the prices of most of the other offerors; in no case is there any region where Indtai would be next in line since there is at least one offeror in each of these regions with higher ratings and a lower price that did not receive an award. Moreover, Indtai has not challenged the excellent ratings of the proposals of the awardees and the five other low-risk offerors. Thus, Indtai would not be in line for award, even if its technical capability rating argument was upheld and it received an excellent rating, because there are intervening offerors who would be in line for award if Indtai's protest ground were sustained.

The protest is denied.

Gary L. Kepplinger
General Counsel