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Decision

Matter of: U.S. Dynamics Corporation

File: B-298889

Date: December 19, 2006

Henry L. Goldberg, Esq., Norman Steiger, Esq., and Brian P. Craig, Esq., Goldberg & Connolly, for the protester.

Robert G. Fryling, Esq., and Brian S. Gocial, Esq., Blank Rome LLP, for U.S. Technologies, Inc., an intervenor.

Gary R. Allen, Esq., Department of the Air Force, for the agency.

Paula A. Williams, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of awardee's price proposal is denied where the record supports the agency's determination that awardee's prices were fair and reasonable.

DECISION

U.S. Dynamics Corporation (USDC) protests the Department of the Air Force's award of a contract to U.S. Technologies, Inc. (USTI) under request for proposals (RFP) No. FA8217-06-R-76466 for a quantity of exciter radios, a part used in radar transmitters. USDC contends that the agency improperly evaluated the awardee's price proposal and, thus, made a flawed award decision.

We deny the protest.

The RFP, as amended, provided for the award of a fixed-price contract for the exciter radios, and the competition was limited to qualified sources known to have the required experience and capability. RFP amend. 3, at 3. Offerors were advised that the agency would "utilize the Lowest Price Technically Acceptable source selection procedure" to arrive at a "best value" award decision by "obtaining the lowest evaluated price." RFP amend. 2, add., § M-900(a). The application of this technique involved determining the acceptability of each offeror's proposal by ascertaining whether the offeror "has been notified by the government that they are

considered a qualified source.” Id., § M-900(b)(1). There is no issue in this protest regarding the evaluation of USTI’s proposal as technically acceptable.

Rather, this protest challenges the evaluation of USTI’s proposal under the price factor. Schedule B of the RFP called for fixed prices to produce a first article unit, test report and test plan data, a minimum production quantity of three and a maximum production quantity of six units after approval of the first article. RFP amend. 3, at 3-7. The RFP also stated that:

The price will be evaluated using the lowest price. [T]his solicitation is for a minimum quantity of 4 each, including first article, and a maximum quantity of 7 each. The evaluation for award will be made on a total price based on a quantity of 4, 5, 6, or 7—example: If a total quantity of 4 is selected for award the evaluation would be a First Article price, Data Price, and Production unit price multiplied by the quantity of 3. These three prices . . . would be summed to provide the lowest evaluated price for the quantity of 4 each. The [contracting officer] will make a unilateral decision on which quantity will be awarded.

RFP amend. 2, add., attach. 1, Price Evaluation. In addition, the solicitation also stated as follows:

In accordance with FAR [Federal Acquisition Regulation] 15.403-1(b) and 15.403-3(a), information other than costs and pricing data may be required to support price reasonableness. Information shall be provided in accordance with FAR 15.403-5. If, after receipt of proposals, the CO [Contracting Officer] determines that there is insufficient information available to determine price reasonableness and none of the exceptions in FAR 15.403-1 apply, the offer shall be required to submit costs or pricing data.

RFP amend. 2, add., § L-900(c)(1).

Four firms, including USDC and USTI, submitted proposals. Of these, only USDC and USTI were deemed qualified sources. RFP amend. 3, at 3; Agency Report (AR), exh. 13, Final Price Competition Memorandum, at 7. The agency thus evaluated both USDC’s and USTI’s proposals as technically acceptable and included those proposals in the competitive range. The agency conducted discussions with each competitive range offeror by issuing evaluation notices to address the delivery schedule for the production units. Offerors were required to respond to the written discussion and clarification questions and were then given an opportunity to submit final revised proposals. Contracting Officer Statement (COS), at 1

Final revised proposals were received and evaluated. For seven units, USTI offered a total price of \$2,600,472, comprised of (1) a first article unit price of \$371,496; (2) a test report and test plan data unit price of \$0.00; and (3) a production unit price of \$371,496. [DELETED] AR exh. 12, Final Price Abstract, at 1-2.

In performing a price reasonableness analysis, the contracting officer compared and contrasted the offerors' final proposed prices for the various quantities of the exciter radios. More specifically, the contracting officer did a comparison of the proposed prices with each other, a comparison of the proposed prices to the independent government estimate (\$2,629,791.78), the technical support office's screening analysis estimate (\$3,251,178.28), the final market research estimate, and the historical pricing information for similar items. AR exh. 13, Final Price Competition Memorandum, at 1-7; COS, at 4-7. The final price evaluation report narrative summarized the contracting officer's conclusion thus:

[t]he offeror selected for award was based on adequate price competition. The prices are extremely competitive. . . . The government made the determination to award 7 each (1 First Article, 1 Data Line item and 6 Production Units). [USTI] was the lowest price for this quantity. The offeror selected for award has provided the best value to the Government based on the evaluation addressed in the RFP. The offered price selected is fair and reasonable based on adequate price competition.

AR exh. 13, Final Price Competition Memorandum, at 7. Thereafter, award was made to USTI. This protest followed.

USDC asserts that the Air Force did not properly evaluate the reasonableness of USTI's proposed price. More specifically, USDC maintains that by proposing the same unit price for both the first article and the production quantities, USTI failed to include necessary non-recurring costs (such as, environmental testing, test fixtures, and reverse engineering due to parts obsolescence) required for the successful production of the first article unit. In addition, USDC points to the fact that USTI entered "zero" dollars for the first article test plan and data report as further evidence that USTI's pricing should have raised questions as to whether USTI's costs were realistic for the work to be performed and whether USTI had a clear understanding of all the solicitation requirements. Protest at 3-6; Protester's Comments at 3-4.

The FAR provides a number of price analysis techniques that may be used to determine whether prices are fair and reasonable, including comparison of the prices received with each other; comparison of previously proposed prices for the same or similar items; and comparison with the independent government estimate. FAR

§ 15.404-1(b)(2). A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. The Right One Co., B-290751.8, Dec. 9, 2002, 2002 CPD ¶ 214 at 5. Our review of the record here provides no basis to question the reasonableness of the contracting officer's determination.

Section M of the RFP, quoted above, clearly stated that an offeror's evaluated price would be calculated by multiplying each of the priced line items by the estimated quantities and by adding all of the extended prices to arrive at the lowest total evaluated price for the varied quantities. RFP amend. 2, adden., attach. 1, Price Evaluation. Further, section M did not require the use of price realism analysis to measure the offerors' understanding of the government's requirements or to assess the risk inherent in an offeror's proposal. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. Rather, as described above, the record shows that the contracting officer agency conducted a price reasonableness evaluation based upon adequate price competition, which reflected approximately a 4 percent differential between the proposals of USDC and USTI, along with comparison of the proposed prices to the government estimate. Although USDC's essential complaint is that the contracting officer's analysis should have been more exhaustive, our review confirms that the price evaluation conducted by the agency was reasonable and fully consistent with the provisions of the RFP.

USDC asserts that the contracting officer should have obtained and analyzed additional information in evaluating offerors' proposed prices. In support of its position, USDC points to language in section L of the RFP which states that information other than costs and pricing data may be required to support price reasonableness. As discussed above, in this case, section M of the RFP did not require that additional information would be evaluated as part of the agency's price evaluation. Absent an RFP provision in a solicitation for a fixed-price contract requiring a price realism analysis, no such analysis is required. Dismas Charities, Inc., B-289575.2; B-289575.3, Feb. 20, 2004, 2004 CPD ¶ 66 at 4.¹

In sum, we conclude, based on this record, that the agency reasonably satisfied its obligation under the FAR and the RFP to perform a price reasonableness evaluation.

¹ Additionally, USDC asserts that the Air Force should have considered whether USTI's pricing methodology created doubt that the firm would satisfy the requirements of the solicitation. However, USDC has not pointed to any areas in USTI's proposal where USTI took exception to the solicitation requirements.

USDC's mere disagreement with how the agency conducted its price reasonableness analysis for these requirements, and with the agency's ultimate conclusion that USTI's prices were fair and reasonable, does not establish that the agency's evaluation was improper.

The protest is denied.

Gary L. Kepplinger
General Counsel