



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Odyssey Marketing Group, Inc.

File: B-412695; B-412695.2

Date: April 21, 2016

Jessica C. Abrahams, Esq., and Erin B. Sheppard, Esq., Dentons US LLP, for the protester.

Maj. Jamal A. Rhinehardt, and Scott N. Flesch, Esq., Department of the Army, for the agency.

Jonathan L. Kang, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the offerors' prices is denied where the evaluation was consistent with the terms of the solicitation, and where, in any event, the protester's allegations concerning the price evaluation do not demonstrate any possibility of prejudice to the protester.

2. Protest challenging the evaluation of the protester's and awardee's proposals is denied where the protester would not be in line for award ahead of a third offeror, even if the protester's allegations had merit.

DECISION

Odyssey Marketing Group, Inc., of Alpharetta, Georgia, protests the Department of the Army's award of a contract to Choctaw Staffing Solutions, of Durant, Oklahoma, under request for proposals (RFP) No. W91247-15-R-0015, for child, youth, and school outreach services in support of the United States Army Reserve Command. The protester argues that the agency unreasonably found its proposal technically unacceptable, failed to identify an organizational conflict of interest (OCI) that should have disqualified the awardee, and unreasonably evaluated the offerors' prices.

We deny the protest.

BACKGROUND

On February 2, 2015, the Army issued the RFP, which sought proposals to provide outreach and assistance services in support of Army active guard duty members and their families “as they strive to balance their work and family responsibilities.” Performance Work Statement (PWS) § 1. The RFP was set aside for small businesses. RFP at 2. The solicitation anticipated the award of a fixed-price contract with a 3-month phase-in period, a 9-month base period, and two 1-year options. RFP amend. 7, at 2; PWS § 1.5.

The solicitation provided for award to the offeror that submitted the lowest-priced, technically-acceptable (LPTA) proposal, based on the following two evaluation factors: (1) mission capability, and (2) price. RFP amend. 6, at 62. The mission capability factor stated that proposals must be rated acceptable under each of the following three subfactors: (1) management approach, (2) staffing and teaming approach/scenarios, and (3) technical experience. Id. at 63. For the price factor, the RFP stated that the agency would evaluate whether an offeror’s proposed price was reasonable, complete, and balanced. Id. at 65-66.

The Army received initial proposals from six offerors, including Odyssey, the incumbent contractor, by the closing date of April 23. The agency issued several solicitation amendments and conducted discussions with the offerors. Final proposal revisions were received from four offerors on October 29. As relevant here, the agency found Odyssey’s proposal unacceptable under the management approach and staffing approach subfactors of the mission capability factor, and therefore unacceptable overall for that factor. Agency Report (AR), Tab 85, Source Selection Decision Document (SSDD), at 7-8.

The Army’s evaluation of the proposals of Odyssey, Choctaw, and Offeror 3 was as follows:

	CHOCTOW	OFFEROR 3	ODYSSEY
MISSION CAPABILITY	ACCEPTABLE	ACCEPTABLE	UNACCEPTABLE
Management Approach	Acceptable	Acceptable	Unacceptable
Staffing Approach	Acceptable	Acceptable	Unacceptable
Technical Experience	Acceptable	Acceptable	Acceptable
EVALUATED PRICE ¹	\$19,501,265	\$20,846,590	\$22,279,436

¹ Offerors’ evaluated prices were based on their proposed prices, as well as the agency’s calculation of the price for an option to extend services under Federal Acquisition Regulation (FAR) clause 52.217-8. AR, Tab 85, SSDD, at 9.

Id. at 7-8.²

The source selection authority, who was also the contracting officer, concluded that, based on the technical evaluation ratings and evaluated prices, Choctaw's proposal was technically acceptable and the lowest-priced. Id. at 9. The agency awarded the contract to Choctaw on December 14, and provided Odyssey a debriefing on January 26, 2016. This timely protest followed.

DISCUSSION

Odyssey raises four primary arguments in support of its challenge to the award to Choctaw: (1) the Army failed to identify an OCI regarding Choctaw that arose from its performance of a contract with the Army Reserve Family Program (ARFP) that gave it access to the protester's competitively sensitive information; (2) the Army's assessment of Odyssey's proposal as unacceptable under the mission capability factor was unreasonable based on (a) an "overly-narrow, hypercritical reading" of its proposal, Protest at 2, (b) unequal treatment of the offerors, including the relaxation of certain requirements for the awardee, and (c) improper consideration of an ongoing False Claims Act investigation of alleged civil fraud in connection with Odyssey's performance of an unrelated ARFP contract; (3) the Army improperly relaxed or waived the solicitation's Service Contract Act (SCA) requirements for Choctaw; and (4) the Army's price evaluation failed to meaningfully compare the offerors' prices.³

As further discussed below, none of the arguments raised by the protester challenge the acceptability of Offeror 3's proposal. For this reason, we first address the protester's argument that the Army unreasonably evaluated the offerors' prices. Because we find no merit to Odyssey's arguments concerning the evaluation of price, and because the RFP provided for award on an LPTA basis, we conclude that there is no need to address the remainder of the protester's arguments, as Odyssey would not be in line for award ahead of Offeror 3, even if these remaining arguments had merit.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation

² The fourth offeror's proposal was found to be technically unacceptable. AR, Tab 85, SSDD, at 7.

³ Odyssey raises other collateral arguments. Although we do not address every argument here, we have reviewed each issue and find that none provides a basis to sustain the protest.

criteria and applicable procurement statutes and regulations. First Coast Serv. Options, Inc., B-409295.4, B-409295.5, Jan. 8, 2015, 2015 CPD ¶ 33 at 8. A protester's disagreement with an agency's judgment in evaluating proposals does not establish that the agency acted unreasonably. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Price Evaluation

Odyssey contends that the Army did not reasonably evaluate the offerors' prices, primarily because the agency failed to account for the offerors' differing approaches to staffing during the phase-in period. We find no merit to this argument and also conclude that, even if the argument had merit, the agency's evaluation could not have prejudiced the protester.

Agencies must consider price or cost to the government in evaluating competitive proposals. 10 U.S.C. § 2305(a)(3)(A)(ii); CW Gov't Travel, Inc.--Recon. et al., B-295530.2 et al., July 25, 2005, 2005 CPD ¶ 139 at 4. While an agency has discretion to select an appropriate method for proposal evaluation, the agency must use an evaluation method that permits a reasonable comparison of the costs of performance under the competing proposals. Bristol-Myers Squibb Co., B-294944.2, Jan. 18, 2005, 2005 CPD ¶ 16 at 4; AirTrakTravel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 22. The method chosen must include a 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. Labatt Food Serv., LP, B-408790, Nov. 25, 2013, 2013 CPD ¶ 279 at 3.

As discussed above, the RFP advised that offerors' proposed prices would be evaluated for reasonableness, completeness, and balance. RFP amend. 6, at 65-66. The RFP contained a single contract line item number (CLIN) for the initial 12-month performance period; the fixed price for this CLIN included a 3-month phase-in period and a 9-month base performance period. RFP amend. 7, at 2; see also PWS § 1.5.

Odyssey asserts that Choctaw and Offeror 3 proposed "skeletal" staffing during the phase-in period, whereas the protester (the incumbent contractor) did not propose a phase-in period and instead stated that it would begin performance at a full staffing level. Protester's Comments (Mar. 21, 2016) at 14, 32. Odyssey does not argue that Choctaw's or Offeror 3's proposed staffing during the transition period rendered their respective proposals unacceptable. Instead, the protester argues that the agency should have made an adjustment to the offerors' prices to account for the differences in their proposed staffing approaches. The protester contends that the absence of such an adjustment precluded an "apples to apples" comparison of the offerors' proposed prices and obscures the actual cost to the government. Id. at 32-33.

We conclude that the Army's price evaluation reasonably considered the offerors' proposed prices. There is no basis in the record to conclude that the agency's price evaluation failed to consider the actual price to the government, because each offeror's proposed price reflects the fixed price the government will pay for the offeror's proposed technical approach. The fact that the protester elected to perform without a transition period--and priced its proposal accordingly--does not demonstrate that the offerors' proposed prices or the agency's evaluation failed to capture the differences between those prices.⁴

In any event, even if the evaluation of the offerors' prices was flawed, Odyssey's arguments demonstrate that the alleged errors could not have prejudiced the protester. In this regard, 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 substantial chance of receiving the award. Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

Here, Odyssey contends that the differences between Odyssey's proposed staffing and the non-incumbent offerors' proposed staffing resulted in an "approximately" \$1.2 million price difference, which was "nearly the entire difference" between Odyssey's and Offeror 3's evaluated prices. Protester's Comments (Mar. 21, 2016) at 33. As the record shows, however, the difference between Odyssey's and Choctaw's evaluated prices was \$2.8 million, and the difference between Odyssey's and Offeror 3's evaluated prices was \$1.4 million. AR, Tab 85, SSDD, at 8. Thus, even if the protester's arguments concerning the agency's price evaluation had merit, the protester's own calculations show that its evaluated price would still be more than \$200 thousand higher than Offeror 3's evaluated price. See id. Because the solicitation provided for award to the offeror that submitted the LPTA proposal, Offeror 3, and not Odyssey would be in line for award. We therefore conclude that the protester's arguments concerning the evaluation of price fail to demonstrate any possibility of prejudice, and find no basis to sustain the protest. See Chandler Solutions, LLC, B-409655.2, Aug. 13, 2014, 2014 CPD ¶ 239 at 4.

⁴ To the extent the protester believed that the RFP's price evaluation criteria did not provide for a fair or meaningful comparison between incumbent and non-incumbent offerors, it should have challenged the solicitation prior to the time for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 6 (dismissing as untimely a post-award challenge to evaluation scheme that the protester argues could produce a misleading result).

Other Challenges

Because we find no merit to Odyssey's challenge to the Army's evaluation of the offerors' prices, we conclude that there is no need to address the remainder of the protester's arguments since, even if they each had merit, there is no basis to conclude that the protester could have been prejudiced by such errors. As discussed above, the protester argues that the agency failed to reasonably evaluate a disqualifying OCI regarding Choctaw, unreasonably found the protester's proposal technically unacceptable, and improperly relaxed or waived the solicitation's SCA requirements for Choctaw. None of these challenges, however, address the technical acceptability or price of Offeror 3's proposal.⁵ Because Offeror 3's proposal was lower-priced than Odyssey's proposal (even if the protester's arguments concerning the price evaluation had merit), sustaining the balance of Odyssey's arguments concerning the evaluation of the protester's and awardee's proposals would result in Offeror 3, and not the protester, becoming the offeror with the LPTA proposal. For these reasons, we conclude that Odyssey could not have been prejudiced by any of these alleged errors, and thus find no basis to sustain the protest. See First Coast Serv. Options, Inc., supra at 8-9; Armed Forces Hospitality, LLC, supra; McDonald-Bradley, supra.

The protest is denied.

Susan A. Poling
General Counsel

⁵ Odyssey argues that its proposal was evaluated in a disparate manner from Offeror 3's proposal with regard to corporate oversight under the management approach subfactor, and mobile team specialists under the staffing approach subfactor. Protester's Comments (Mar. 21, 2016) at 27-29. In both cases, the protester argues that its proposal should have been found technically acceptable because it offered a similar approach to Offeror 3. Id. The protester does not, however, argue that Offeror 3's proposal should have been found unacceptable.