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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Government Contracts Consultants

File: B-294335

Date: September 22, 2004

James D. Bailey for the protester.

Maj. Jennifer S. Zucker, Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that awardee's price is too low to have been based on an adequate staffing level does not raise serious concerns that contracting officer ignored relevant information in finding awardee responsible so as to trigger GAO review of contracting officer's affirmative responsibility determination.

DECISION

Government Contracts Consultants (GCC) protests the Department of the Army's selection of Ultima Services Corporation under request for quotations (RFQ) No. W911RX-04-T-0100, for postal services at Fort Riley, Kansas. The protester contends that Ultima's price is unreasonably low and that the awardee lacks relevant experience.

We deny the protest.

The RFQ requested prices for a base and 3 option years and contemplated the award of a fixed-price contract.¹ In section M, the RFQ provided both for award to the lowest-priced responsible vendor, and for award to the responsible vendor submitting the quotation evaluated as most advantageous to the Government, price and past performance (which were of equal weight) considered.

¹ We note that while the solicitation was styled a request for quotations, in various places it uses terms associated with a request for proposals, and specifically provides for award of a contract to the successful firm. See RFP § L at 58; § M at 60.

Only GCC and Ultima submitted quotations. Ultima's quoted price of \$517,450.71 was less than half GCC's price of \$1,115,182.56, and both vendors were found to have good past performance. The contracting officer selected Ultima's quotation for award.²

The protester argues that Ultima's price is too low to be based on the minimum number of personnel required to perform the contract work satisfactorily, and that the agency was remiss in failing to perform a price realism analysis of the quotation.

Regarding the protester's assertion that Ultima's price is too low, a protester's claim that another firm submitted an unreasonably low price—or even that the price is below the cost of performance—is not a valid basis for protest. Brewer-Taylor Assocs., B-277845, Oct. 30, 1997, 97-2 CPD ¶ 124 at 4. A firm, in its business judgment, properly may decide to submit a price that is extremely low. Id. An agency decision that the firm can perform the contract at the offered price is an affirmative determination of responsibility that we will not review absent an allegation that definitive responsibility criteria in the solicitation were not met or the identification of evidence raising serious concerns that, in reaching the responsibility determination, the contracting officer unreasonably failed to consider available relevant evidence or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2004); Consortium HSG Technischer Serv. GmbH and GeBe Gebäude- und Betriebstechnik GmbH Südwest Co., Mgmt. KG, B-292699.6, June 24, 2004, 2004 CPD ¶ 134 at 4. The protester has not alleged that definitive responsibility criteria were not met and its only evidence that the contracting officer failed to consider available relevant evidence in determining Ultima responsible is that Ultima's price is, in the protester's judgment, too low to have been based on an adequate level of staffing. This is not, in our view, a proffer of evidence sufficient to raise serious concerns that the contracting officer ignored relevant information in making her determination.

Further, regarding the protester's claim that the agency should have performed a realism analysis of Ultima's quoted price, where, as here, a solicitation contemplates the award of a fixed-price contract, the agency is not required to conduct a realism analysis. This is because a fixed-price (as opposed to a cost-type) contract places the risk and responsibility for loss on the contractor. Rodgers Travel, Inc., B-291785, Mar. 12, 2003, 2003 CPD ¶ 60 at 2.

GCC also argues that Ultima "lacks the required relevant experience to perform." Protest at 4. The protester asserts in this regard that Ultima has not previously

² At the time the contracting officer selected Ultima for award in late June, funding for the contract, on which performance was to begin in fiscal year 2005, was not yet available; hence, no award was made at that time.

performed a contract for postal operations, and that Ultima is currently performing a contract at Fort Riley for school crossing guard services.

The solicitation did not require that vendors have experience in the operation of a postal facility; it merely required that they furnish three references for work the same as or similar to the work set forth in the solicitation to permit the agency to perform an evaluation of their ability to perform.³ To the extent that the protester is arguing that because Ultima had not previously performed a contract for postal operations, the agency could not reasonably have determined it responsible, as noted above, we will not—except in circumstances not present here—review an affirmative determination of responsibility. In the alternative, to the extent that the protester is arguing that the agency could not reasonably have rated Ultima’s past performance as good, the record shows that the evaluation was based on favorable references from four prior contracts, three of which involved work considered by the agency to be similar to the work required under the RFQ. We see no basis to find unreasonable the agency’s determination that three of the awardee’s contracts were relevant and warranted a “good” rating in the past performance area.⁴

Finally, the protester complains that the RFQ was ambiguous in that it provided for award on two different bases, *i.e.*, to the lowest-priced responsible vendor, and to the responsible vendor submitting the quotation evaluated as most advantageous to the government, price and past performance considered. This complaint, which is based on an alleged impropriety apparent on the face of the solicitation, is untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (protests based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of quotations shall be filed prior to the time set for receipt); Watchdog, Inc., B-258671, Feb. 13, 1995, 95-1 CPD ¶ 69 at 5. In any event, the selection of Ultima, which had a past performance rating equivalent to and a price significantly lower than the protester’s, was consistent with both methodologies.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ As the protester points out in its comments, the RFQ did require that both the project manager and alternate project manager have experience with a mail distribution center; we fail to see the relevance of these requirements pertaining to employee qualifications to the protester’s argument, however.

⁴ Our discussion of the agency’s evaluation of the awardee’s past performance is necessarily limited because the specific information considered was designated as protected by the agency and therefore not furnished to the protester. Our Office received and reviewed all the information, however.