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Decision

Matter of: American Technologies, Inc.

File: B-401445

Date: August 28, 2009

Keith D. Williams, Esq., Marquis & Aurbach, for the protester.
Terry E. Thomason, Esq., and Jessica Y. K. Wong, Esq., Alston Hunt Floyd & Ing, for Environet, Inc., an intervenor.
Matthew R. Keiser, Esq., U.S. Army Corps of Engineers, for the agency.
Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency conducted inadequate evaluation of awardee's proposed price, which was significantly below government estimate, is denied where record shows agency conducted systematic and well-documented evaluation of awardee's price, consistent with solicitation requirements.

DECISION

American Technologies, Inc. (ATI) of Oak Ridge, Tennessee, protests the award of a contract to Environet, Inc., of Honolulu, Hawaii, under request for proposals (RFP) No. W9128A-09-R-0011, issued by the U.S. Army Corps of Engineers for services related to identification and disposition of munitions at former defense sites in Hawaii. The protester asserts that the agency did not reasonably evaluate Environet's price, which was so low that Environet's proposal should have been eliminated from the competition.

We deny the protest.

The RFP, issued on February 17, 2009, contemplated the award of a single fixed-price, indefinite-delivery indefinite-quantity contract for a base year, with 4 option years, to safely locate, identify, recover, evaluate, manage, and make final disposition of "munitions and explosives of concern" (MEC), principally at the former Waikoloa Maneuver Area (WMA) in Hawaii. Contracting Officer's Statement (COS) at 1; RFP at 1, 23.

The RFP provided for award to the firm submitting the technically acceptable offer with the lowest price for the first task order (the RFP included the scope of work for the first task order). RFP at 39. Acceptability was to be determined based on three technical factors—experience, past performance, and key personnel. RFP at 39-45. With regard to the price evaluation, the RFP provided that a price analysis would be performed—by comparing proposal prices to other prices received, available historical information, and the government estimate—and that unrealistically low prices could be grounds for eliminating a proposal from the competition, on the basis that the offeror does not understand the requirement. RFP at 44-45.

ATI and Environet submitted proposals; both were found technically acceptable. COS at 4. (A third proposal was rejected as unacceptable. Id.) ATI's and Environet's proposed prices and the government estimate for the first task order were as follows:

Offeror	Proposed Price
ATI	\$1,143,448
Environet	\$596,102
Gov't Estimate	\$2,585,503

Id. at 5. Environet's proposal—the apparent low-priced, technically acceptable offer—was evaluated for price reasonableness, and award subsequently was made to Environet on May 22. This protest was filed on June 1.

ATI asserts that, since Environet's proposed price is approximately one-quarter of the government estimate and one-half of ATI's price, it is “inconceivably low.” Protest at 4. The protester asserts that the Army must have disregarded the evaluation process set forth in the RFP. Id. at 6.

In general, there is no requirement that a price realism analysis be performed when award of a fixed-price contract is contemplated. Phoebe Putney Mem'l Hosp., B-311385, June 19, 2008, 2008 CPD ¶ 128 at 2. As was the case here, however, a solicitation for a fixed-price contract may provide for a price realism analysis for the purpose of assessing offerors' understanding of the requirements or the risk inherent in offerors' proposals. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. The nature and extent of a price realism analysis ultimately are matters within the exercise of the agency's discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. Northrop Grumman Info. Tech., Inc. et al., B-295526 et al., Mar. 16, 2005, 2005 CPD ¶ 45 at 19. We find that the Army's evaluation of Environet's cost proposal was unobjectionable.

The Army conducted two separate analyses of Environet's price. First, concurrently with the technical evaluation, the Army reviewed both offerors' proposed rates to determine if they were fair and reasonable. This review resulted in a finding that

“there was a great difference” with regard to several proposed rates in comparison to the government estimate and that these rates “should be validated.” AR, Tab K, Memorandum, Apr. 7, 2009. The agency thereafter conducted an “expanded price analysis,” which indicated that Environet’s price for the first task order was “significantly lower” than the government estimate. The agency went on to determine, however, that this difference resulted substantially from the conservative nature of the government estimate and Environet’s status as an incumbent contractor. Specifically, the Army explained as follows:

The Government performed a thorough review of EI’s [Environet’s] proposal. The primary reason for the difference in price is due to the fact that the GE [government estimate] is conservatively based on the use of a contractor who is not familiar with the Waikoloa Maneuver Area (WMA) and would be working in this area for the first time. EI is the incumbent contractor ... and based their proposal on their familiarity of the site, and their current production rates when it comes to MEC clearance. ... Therefore, with actual cost data available from performance of the work, EI’s proposal appears to be more realistic in comparison with the GE, and shows that the offeror has a clear understanding of the SOW, and includes sufficient effort to complete what is required in the SOW.

AR, Tab N, Price Evaluation Report, Apr. 30, 2009, at 2-3.

The agency went on to address in detail each of seven cost elements where Environet’s price was substantially lower than the estimate. Id. at 3-6.¹ In each case, the agency determined that there was a reasonable explanation for the difference in cost. For example, with regard to [deleted], the agency determined that the [deleted] proposed by Environet were “consistent with” the [deleted] existing contract with Environet for ongoing MEC clearance at Waikoloa. Id. at 4. The agency noted that, unlike the government estimate, Environet’s proposal provided for use of “existing plans that were accepted by the Government” and proposed to only “update them for this new project site.” Id. Similarly, the agency found that Environet’s proposal [deleted] adequately substantiated in Environet’s proposal, which listed [deleted] under an ongoing contract. Id.

As a further example, the agency found that Environet’s low costs for [deleted] were due in substantial part to the fact that, unlike the government estimate, Environet’s proposal did not include the cost of [deleted]. Id. Likewise, with regard to Environet’s proposed [deleted], Environet explained that [deleted]. Id. at 4-5.

¹ This memorandum was supplemented by an addendum dated May 14, 2009, which “further explains and clarifies” the acceptance of Environet’s proposed hourly and overhead rates. AR, Tab P.

ATI asserts that, rather than accept Environet's explanations at face value, the Army should have further investigated those representations. However, no such further investigation was required. The Army requested information where pricing anomalies were apparent, and then assessed whether the information that was in the proposal or furnished by Environet provided a logical explanation for the anomalies. We find that, on their face, Environet's information and explanations provided a logical basis for its low price. This being the case, and absent any countervailing evidence, we think the agency reasonably could conclude that the information and explanations provided were sufficient to establish that Environet's pricing was not based on a misunderstanding of the requirement, which was the limited purpose of the price analysis under the RFP. See Pemco Aeroplex, Inc., B-310372.3, June 13, 2008, 2008 CPD ¶126 at 8 (protest challenging price realism evaluation in fixed-price contract denied where protester failed to demonstrate that agency's actions, inactions, or analyses were inconsistent with the terms of the solicitation).

The protest is denied.

Daniel I. Gordon
Acting General Counsel