

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

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Decision

Matter of: International Transport Company

File: B-406924.2; B-406924.3

Date: December 20, 2012

Philip J. Davis, Esq., Wiley Rein LLP, for the protester.

Matteo Zappile, Franzosini Sud SRL., for the intervenor.

Keith M. Dunn, Esq., Department of the Navy, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Awardee's proposal was properly found technically acceptable where a site inspection by contracting personnel indicated that the awardee met the solicitation requirement for a minimum dedicated storage.
 2. Protest against evaluation of awardee's past performance is denied where the evaluators reasonably determined that the awardee's submitted contracts were relevant, despite being significantly smaller in magnitude than the solicited requirement, because they involved essentially the same services as the solicited requirement.
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DECISION

International Transport Company (ITC) protests the Department of the Navy's award of a contract to Franzosini Sud SRL (Franzosini), under request for proposals (RFP) No. N68171-12-R-0003, for packing, moving and shipping services for Department of Defense personnel in the Naples, Italy area. The protester asserts that Franzosini's proposal was unacceptable and otherwise improperly evaluated with regard to price realism and past performance.

We deny the protest.

BACKGROUND

The RFP was issued on December 15, 2011, for packing, moving, and shipping services related to personal property and household goods of Department of Defense personnel in the Naples, Italy area. The RFP contemplated award of a fixed-price, indefinite-delivery, indefinite-quantity (ID/IQ) contract. Award was to be made to the responsible offeror whose offer, conforming to the RFP, was most advantageous to the government considering evaluation factors for technical capability, past performance, and price. Technical capability was to be rated on an acceptable/unacceptable basis. Of particular importance in this regard, the RFP required that “[t]he contractor must have an approved DD1811 (Pre-Award Survey of Contractors/Carrier's Facilities and Equipment) on file [with the agency] prior to contract award.” RFP (Original) at 45. Form DD1811 includes both a block for entry of the “Total Storage Space” and one for a “Narrative Description of Building.” See Agency Report (AR), Tab 12, Franzosini DD1811, Dec. 19, 2005.

Five proposals (including those of ITC and Franzosini) were received in response to the RFP. Based on its evaluation of proposals, the agency initially awarded a contract to ITC on March 23, 2012. On April 3, Franzosini filed a protest (B-406580) with our Office, challenging the agency’s determination that its proposal was technically unacceptable due to Franzosini’s failure to submit an approved form DD1811. The agency subsequently determined that Franzosini’s proposal should not have been found technically unacceptable because the company, in fact, had an approved DD1811 on file with the agency. Contracting Officer’s Statement (COS) at 2; see Agency Letter, Apr. 13, 2012. Upon being advised by the agency that it would take corrective action, GAO dismissed Franzosini’s protest. B-406580.1, Apr. 17, 2012. The agency then issued amendment No. 0001 to the RFP on June 22, 2012. That amendment, inter alia, added a minimum storage area requirement of 1,200 square meters (sm) and required offerors to provide an “affirmative statement” that they met this requirement. Amend. No. 0001 at 1, 43. Four revised proposals were received by the new closing time on July 25. Based upon its evaluation of the revised proposals, the agency determined that Franzosini had submitted the most advantageous offer and made award to that firm on September 11. COS at 3, 6; AR, Tab 18, Post Negotiation Business Clearance Memorandum.

DISCUSSION

ITC raises several challenges to the evaluation of Franzosini’s proposal. We have considered all the issues raised by ITC and find that none furnishes a basis for questioning the award to Franzosini. In this regard, the evaluation of proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4. In reviewing an agency’s evaluation, we will not reevaluate proposals, but

instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. We address the most significant issues raised by ITC below.

1,200 Square Meters Storage Space Requirement

As noted, the RFP as amended provided that “[t]he minimum dedicated, secured storage area to be provided by the contractor is 1,200 Square Meters.” Amend. No. 0001 at 43. ITC asserts that Franzosini’s proposal should have been found technically unacceptable on the basis that, while the RFP required a minimum of 1,200 sm of dedicated storage space, the Form DD1811 on file for Franzosini indicated only 300 sm of available space in the Narrative Description of Building block. See Franzosini DD1811, Dec. 19, 2005.

We find this argument unconvincing. While the RFP provided that the offeror was required to have an “approved DD1811” on file, amend. No. 0001 at 44, and Franzosini’s DD1811 on file with the agency indicated a current space availability as of the time of the form of only 300 sm, we agree with the agency that this did not render Franzosini’s proposal unacceptable. The record indicates that Navy contracting personnel, on August 1, 2012, that is, prior to award, conducted an on-site inspection of Franzosini’s proposed facility which confirmed that, in fact, Franzosini’s facility had over 1,500 sm of secured storage area that could be made available and totally dedicated to the government.¹ COS at 3. Based on this information, the contracting officer properly determined Franzosini’s proposal to be technically acceptable.

Price Realism

The RFP provided that “[u]nrealistically low or high proposed prices may be grounds for eliminating a proposal from competition either on the basis that the offeror does not understand the requirement or has made an unrealistic proposal.” RFP at 92. ITC asserts that the agency’s price realism evaluation of Franzosini’s proposal was inadequate. According to the protester, the nature of the work required under the RFP does not involve “the type of services that lend themselves to varied and creative technical approaches that make such low pricing plausible.” Comments at 4. ITC concludes that, given the nature of the work, the large difference between

¹ Franzosini’s approved DD1811 on file with the agency, dated December 19, 2005, indicated that Franzosini’s facility had 1,600 sm of “Total Storage Space,” of which, at that time, 300 sm was available for government requirements. Franzosini DD1811, Dec. 19, 2005.

Franzosini's proposed price (€2,859,795) and ITC's price (€3,643,457), calls into question how Franzosini could realistically offer such low prices.

We find this protest ground to be without merit. First, under a solicitation such as this for a fixed-priced contract, there is no prohibition against an agency's acceptance of a low or below-cost offer. SAIC Computer Sys., B-258431.2, Mar. 13, 1995, 95-1 CPD ¶ 156 at 2, 11-13. While price realism need not be considered in evaluating proposals for the award of a fixed-price contract, an agency may, as here, include in a solicitation a provision that provides for a price realism evaluation for the purpose of assessing whether an offeror's low price reflects on its understanding of the contract requirements. General Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 9. Where a solicitation provides for a price realism evaluation, the depth of an agency's evaluation in this regard is a matter within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. General Dynamics One Source, LLC; Unisys Corp., supra, at 9.

Although the agency's evaluation, at some points, appears to conflate price realism and price reasonableness, it is plain from the record that the evaluators recognized that Franzosini's prices were comparatively low, yet considered several factors that supported the conclusion that Franzosini had neither failed to understand the requirement nor submitted an unrealistic proposal. Post Negotiation Business Clearance at 14-18. In this regard, the evaluators relied in part on a site visit to Franzosini's facility, which confirmed that Franzosini had available the necessary storage facilities and equipment. The evaluators further noted that Franzosini had long been active in the primary business line that was the subject of the procurement, and that there was no reason to believe that Franzosini's low price was the result of a misunderstanding of the requirement. Id. at 16. Rather, the contracting officer concluded that Franzosini's low prices were a "reflection of Franzosini's attempt to provide competitive pricing enabled by their own performance based approach." Id. In our view, this information and analysis constituted a sufficient review of the realism of Franzosini's prices, and satisfied any concerns with regard to possible risk to the government, which is a primary aspect of price realism analysis in a fixed price situation. See, e.g., Flight Safety Services Corp., B-403831, B-403831.2, Dec. 9, 2010, 2010 CPD ¶ 294 at 7-8; Phacil Inc., B-406628, July 5, 2012, 2012 CPD ¶ 202 at ____.

Past Performance Evaluation

ITC challenges the evaluation of Franzosini's past performance. The protester asserts that since the contracts Franzosini cites in its past performance proposal

were significantly less in value than the contract being awarded, they were unreasonably viewed as “relevant” to the effort here.

In reviewing a protest challenging an agency’s past performance evaluation, we will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. A protester’s mere disagreement with the agency’s evaluation provides no basis to question the reasonableness of the evaluators’ judgments. See Citywide Managing Servs. of Port Washington, Inc., *supra*, at 10-11.

The RFP here provided for rating prior contracts for purposes of relevance as follows:

Very relevant: Present/past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.

Relevant: Present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.

Somewhat Relevant: Present/past performance involved some of the scope and magnitude of effort and complexities this solicitation requires.

RFP at 92 (emphasis added).

Franzosini submitted three contracts. Its first contract, with ITO Mobel Transport, was for packing, storage, and transportation of personal property and household goods belonging to Department of Defense military/civilian personnel, and had a value of €925,235. It was found to be “relevant,” based on a finding that the services were “essentially the same as the current requirement, but smaller in scope and magnitude.” Post Negotiation Business Clearance Memorandum at 9. Franzosini’s second contract, with SANRISE LLC, was also for packing, storage, and transportation of personal property and household goods belonging to Department of Defense military/civilian personnel, and had a value of €734,680. It was found to be relevant on the basis that the services were “essentially the same as the current requirement, but smaller in scope and magnitude.” Id. Franzosini’s third contract, the “U.S. Consulate General” contract, was likewise for packing, storage, and transportation of personal property and household goods belonging to Department of Defense military/civilian personnel, and had a value of €568,450. This contract was also rated relevant. Id. Overall, Franzosini received a “relevant” rating for the contracts submitted for the past performance evaluation. Id. at 8.

We find the evaluation in this regard to be unobjectionable. The solicitation indicated that a “relevant” rating was warranted where the “performance effort involved similar scope and magnitude of effort and complexities,” while a “somewhat relevant” rating was warranted where the “performance involved some of the scope and magnitude of effort and complexities.” RFP at 92. While all three Franzosini contracts were of a lesser magnitude (€925,235, €734,680, and €568,450) than the current requirement as evidenced by either the agency estimate for this requirement (€6,141,650) or Franzosini’s price (€2,859,795), each of the contracts was for services that were essentially the same as the current requirement, that is, packing, storage, and transportation of personal property and household goods belonging to Department of Defense personnel. Further, we note that the RFP provided that, in evaluating past performance, the agency may “obtain information for use in the evaluation of past performance from any and all sources,” RFP at 91; as the agency points out, the references on all three of Franzosini’s contracts rated Franzosini’s performance as “Very Relevant” to the current effort. Supp. AR at 7; Post Negotiation Business Clearance Memorandum. In these circumstances, we cannot conclude that the agency acted unreasonably in rating each of Franzosini’s contracts relevant rather than only somewhat relevant.

In any case, we note that ITC appears not to have been prejudiced by the agency’s approach here to determining relevance. ITC’s contract with Panda Transporti Srl was valued at €170,000, significantly less than any of the contracts submitted by Franzosini, yet the agency found this contract to be “relevant” notwithstanding that the services performed were plainly “smaller in scope and magnitude.” AR, Tab 18, at 10; see Alanna Orr, B-310966.2, May 14, 2008, 2008 CPD ¶ 95 at 3 (prejudice is an essential element of every viable protest and, where it is not demonstrated or otherwise evident, GAO will not sustain a protest allegation, even where the record shows that the agency’s actions arguably were improper).

The protest is denied.

Susan A. Poling
General Counsel