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Decision

Matter of: AmaTerra Environmental Inc

File: B-408290.2

Date: October 23, 2013

Daniel C. McAuliffe, Esq., Reid Law PC, for the protester.
Michael J. Farr, Esq., Greg Harding, Esq., Department of the Air Force, for the agency.
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DIGEST

1. A protester's post-award challenge to the price evaluation methodology set forth in a solicitation is untimely.
2. In a negotiated procurement that provided for the award of 10 contracts on a lowest-price, technically acceptable basis, the protester was not entitled to receive an award, where the agency awarded 11 contracts to offerors that were all lower-priced than the protester.

DECISION

AmaTerra Environmental, Inc., of Austin, Texas, protests the Department of the Air Force's failure to award it a contract under request for proposals (RFP) FA8903-12-R-8000 for advisory and assistance services (A&AS). AmaTerra challenges the agency's price and technical evaluation of its proposal.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside, contemplated the award of 10 indefinite-delivery/indefinite-quantity contracts against which fixed-price and cost reimbursement task orders could be issued for A&AS. RFP § M.1.3. Offerors were informed that awards would be made without conducting discussions on a lowest-priced, technically acceptable basis, considering the following factors: technical

acceptability and cost/price (pricing model).¹ RFP § M.2.0(b). The RFP provided that the agency would conduct a two-phased evaluation. In the first phase, the agency would rank the offers by total evaluated price and select the 18 lowest-priced offers for evaluation under the second phase. In the second phase, these offers would be evaluated for technical acceptability, and their proposed prices would be evaluated for reasonableness and realism. RFP §§ M.2.0(a), M.2.2.

With respect to cost/price, the RFP included a pricing model that offerors were required to use to propose fixed, fully-burdened labor rates for various identified labor categories. RFP § L, Pricing Model Worksheets. The model provided for the calculation of an overall average labor rate for each labor category. In this regard, offerors were informed that, where a prime and its team members proposed labor rates for the same labor category, the prime's and team members' rates would be averaged to calculate a single labor rate. See RFP § M.2.2(1)(iii). In response to industry questions concerning the fairness of averaging the labor rates of the prime contractor and its team members, as well as arguments that the average rate should be based upon the use of a weighted average, the Air Force stated that it would not use a weighted average to calculate the average labor rates. See Agency Report (AR), Tab 12, Questions/Answers Nos. 1, 6 and 7 (3rd Round).

The Air Force received 19 proposals, including AmaTerra's, in response to the RFP. Contracting Officer's Statement at 9. The proposals were evaluated by the agency's source selection evaluation board (SSEB), which first ranked the proposals by total evaluated price. AR, Tab 21, Proposal Analysis Report, at 9-10. All 19 offers, including AmaTerra's, were included in the second phase of the evaluation. The SSEB found that AmaTerra's evaluated price was reasonable, although it was the highest of the 19 offers.²

The SSEB then evaluated the proposals for technical acceptability. The proposals of five offerors were found to be technically acceptable. The remaining proposals, including AmaTerra's, were determined to be technically unacceptable. See AR, Tab 20, Final Decision Briefing, at 33. The SSEB's evaluation was reviewed by the agency's source selection advisory council (SSAC), which also found that the evaluated prices of all 19 offerors, including AmaTerra, were reasonable. Id. at 28. The SSAC also agreed that only five proposals (but not AmaTerra's) were

¹ The technical acceptability factor included the following three equally-weighted subfactors: workforce management approach, corporate experience, and quality approach. RFP § M.2.1.

² Initially, AmaTerra's price was evaluated to be third highest. After the agency's correction of a number of obvious mistakes in AmaTerra's pricing model, it was evaluated to be the highest-priced proposal. See AR, Tab 20, Final Decision Briefing, at 31-33.

technically acceptable. Id. at 39. The SSAC noted that AmaTerra's and a number of other firms' proposals were unacceptable only under the corporate experience subfactor, which could be viewed as a matter of responsibility. AR, Tab 21, Proposal Analysis Report, at 35.

The SSEB's and SSAC's evaluation judgments were provided to the source selection authority (SSA), who made an independent assessment of the proposals. AR, Tab 22, Source Selection Decision, at 4. The SSA determined that the proposals that were found to be unacceptable under the corporate experience subfactor should be referred to the Small Business Administration (SBA) for consideration under that agency's certificate of competency (COC) program. Id. at 1, 4. The SSA also decided, however, that AmaTerra's proposal should be rejected because its evaluated price was unreasonably high. Id. at 5.

Ultimately, the SSA selected the proposals of 11 offerors for award (six of which had received COCs from the SBA). The evaluated prices of the offers that were selected for award ranged from \$573,834 to \$1,097,780. AR, Tab 20, Final Decision Briefing, at 33; AR, Tab 22, Source Selection Decision, at 1, 4. AmaTerra's highest-priced proposal (\$1,242,416) was rejected. Id., Tab 22, at 2, 5.

This protest followed a debriefing.

DISCUSSION

AmaTerra challenges the price evaluation, complaining that the Air Force averaged AmaTerra's and its team members' labor rates without considering the percentage of effort each party was proposed to provide, that is, using a weighted average. See Protest at 4. The Air Force responds that AmaTerra's protest in this regard is an untimely challenge to the terms of the solicitation. Agency Memorandum of Law at 19.

We agree with the Air Force that AmaTerra's post-award challenge to the agency's methodology for evaluating the offerors' proposed prices is untimely. Our Bid Protest Regulations require that protests of alleged apparent solicitation improprieties be filed prior to the closing time for submission of initial proposals. 4 C.F.R. § 21.2(a)(1) (2013).

Here, the RFP plainly informed offerors that in evaluating price the agency would average the prime contractor's and team members' loaded labor rates for each labor category. See RFP § M.2.2(1)(iii). In this regard, offerors were informed in the agency's responses to industry questions that the agency would not use the weighted-average methodology (which AmaTerra now advocates) to determine average labor rates. AR, Tab 12, Questions/Answers Nos. 1, 6 and 7 (3rd Round). Consistent with this approach, the RFP and its pricing model did not request that offerors identify the percentage of work that would be performed by the prime

contractor and team members for each labor category to allow the kind of analysis now argued for by the protester.³

AmaTerra also protests the agency's determination that its price was unreasonably high. We need not address this complaint because the record shows that, even if AmaTerra's proposal was considered to be technically acceptable,⁴ AmaTerra's evaluated price was higher than the awardees' evaluated prices. Given that the RFP contemplated the award of 10 contracts on a lowest-price, technically acceptable basis, and that the Air Force in fact made 11 awards, there is no basis to conclude that AmaTerra is entitled to an award under the RFP.

The protest is denied.

Susan A. Poling
General Counsel

³ AmaTerra's pricing model also did not use a weighted-average method to calculate its average labor rate for labor categories for which AmaTerra proposed teaming partners. See, e.g., AR, Tab 16, AmaTerra's Price Proposal, Pricing Model, at 33.

⁴ As noted above, AmaTerra's proposal was also found unacceptable under the corporate experience subfactor, but the agency did not refer it to the SBA for consideration under that agency's COC's procedures. Although AmaTerra also challenges the agency's evaluation of its corporate experience, the record shows that AmaTerra would not have received an award even if its proposal was found to be acceptable.