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Decision

Matter of: Resource Ltd.

File: B-406492; B-406492.2

Date: June 6, 2012

Gerald H. Werfel, Esq., Pompan, Murray & Werfel, .P.L.C., for the protester.
Thomas J. Madden, Esq., and James Y. Boland, Esq., Venable LLP, for Sodexo Limited., the intervenor.

Amanda M. Willis, Esq., Department of the Air Force, for the agency.
Linda C. Glass, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation contemplated award of fixed-price contract, price realism analysis was reasonable where agency compared proposed prices to independent government estimate and other proposed prices, and ensured that prices reflected a complete understanding of the requirement.
 2. Protest that the independent government estimate (IGE), revised after receiving initial offers, was unreasonable and that awardee's price realism determination was improperly based on comparison with the revised IGE is denied, where agency had a reasonable basis for revising the IGE and the revised IGE was consistent with prices received by the majority of the competitive range offerors.
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DECISION

Resource Ltd., of the United Kingdom, protests the award of a contract to Sodexo, Limited. of the United Kingdom, under request for proposals (RFP) No. FA5587-11-R-0008, issued by the Department of the Air Force, for custodial services at Air Force facilities in the United Kingdom. Resource challenges the agency's price realism analysis.

We deny the protest.

BACKGROUND

The RFP provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract on a lowest-price technically acceptable basis. The following evaluation factors and subfactors were identified:

- (1) Technical Capability Proposal
 - (a) Transition Plan
 - (b) Quality Control Plan
- (2) Past Performance
- (3) Price

RFP at 33-34. Offerors were informed that proposals would be evaluated as acceptable or unacceptable under the technical capability factor and as satisfactory or unsatisfactory under the past performance factor. Id. at 34.

With respect to the technical capability subfactors, the RFP provided that proposals must receive an acceptable rating under each subfactor to be rated acceptable under the technical capability factor. Offerors were informed that to receive an acceptable rating under these subfactors their proposals must comprehensively address all prescribed elements in the transition and quality control plans, and meet the minimum requirements of the solicitation. RFP at 35.

With respect to price, the RFP required offerors to provide fixed unit-prices for a number of contract line item numbers (CLIN), each of which identified an estimated quantity of square feet of space for custodial services.¹ Offerors were informed that a total evaluated price would be calculated by multiplying the proposed unit prices by the CLIN's estimated quantities. The RFP also provided that the agency would assess the reasonableness, realism, and affordability of offerors' prices in accordance with Federal Acquisition Regulations (FAR) § 15.305. RFP at 36.

The Air Force received five proposals, including Resource's and Sodexo's, which were evaluated by the agency's source selection evaluation board (SSEB). All of the proposals were found to be technically acceptable with satisfactory past performance. Agency Report (AR), Tab 8, Competitive Range Determination.

¹ Two CLINs requested that offerors provide fixed-unit-prices for a 1 month transition period (CLIN 0001) and for 620 hours of emergency/contingency services (CLIN 0007). RFP at 3 and 6.

Sodexo's initial proposed price was [Deleted]; and Resource's initial proposed price was [Deleted]. The initial independent government estimate (IGE) was £11,090,983.² Id. at 16.

With respect to the evaluation of Sodexo's proposal, the SSEB found that Sodexo's technical capability proposal comprehensively addressed all prescribed elements in its transition and quality control plans, and clearly met the RFP's minimum requirements. AR, Tab 20, Proposal Evaluation Report, at 9-10. The SSEB also found that Sodexo's proposed prices demonstrated a clear understanding of the requirements and was consistent with the methods of performance described in Sodexo's technical proposal regarding transition and quality control. Id. at 12.

Because all of the offerors' proposed prices were much less than the IGE, the Air Force reviewed the IGE and found a number of errors. For example, the Air Force concluded that it had misused historical pricing information and had failed to account for newly standardized levels of service for this requirement. See Contracting Officer's Statement at 26-28. Following its review, the Air Force concluded that the IGE for this procurement should be £6,806,378. The revised IGE was relied upon by the agency in conducting discussions. Id. at 28.

The agency conducted price discussions with Resource, Sodexo, and two other offerors.³ The Air Force issued three evaluation notices (ENs) to Sodexo where the agency found Sodexo's prices for certain identified CLINs to be low when compared to IGE. See AR, Tab 16, ENs, at 7. Sodexo responded that, although the firm believed that it had offered adequate staffing, there would be a benefit by increasing staffing; Sodexo therefore raised its prices for those CLINs. Id. at 8. Because Sodexo's revised pricing was still considerably lower than the IGE, the SSEB performed further price analysis, which included evaluating Sodexo's cost data and comparing its revised unit pricing with the average unit pricing of the next two lowest-priced offerors. Id. The SSEB concluded that Sodexo's pricing was realistic and was based upon a complete understanding of the requirements. Id. at 9. In this regard, the SSEB found that Sodexo had accounted for associated costs in support of the work requirements. Id.

The Air Force also conducted price discussions with Resource. The protester was advised that its unit pricing for certain CLINs was high compared to the IGE. AR, Tab 15, ENs, at 8. Resource responded by revising its CLIN pricing but not its overall price. Id. at 9.

² The RFP provided that all proposed pricing must be in British Sterling Pounds (£). RFP at 33.

³ One offeror later withdrew during negotiations.

Final proposal revisions were requested, and Sodexo reduced its overall price by [Deleted]. AR, Tab 17, Sodexo Final Proposal Revision, at 3. Sodexo stated that this “will have absolutely no impact on our service standards or management and staffing levels” and that the contract was “strategically important and vital to Sodexo as we seek to grow our USAFE business.” Id. Resource lowered its overall price by 6.9 percent in its revised proposal. Id., Resource Final Proposal Revision, at 7-13. The competitive range offerors’ initial and final proposed prices, in British Sterling Pounds, were as follows:

OFFEROR	Initial Price	Final Price
Sodexo	[Deleted]	4,997,331
Offeror A	[Deleted]	[Deleted]
Offeror B	[Deleted]	[Deleted]
Resource	[Deleted]	8,509,040
IGE	11,090,983	6,806,378

AR, Tab 20, Proposal Evaluation Report , at 33.

Award was made to Sodexo as the lowest-priced, technically acceptable offeror. Following a debriefing, Resource protested to our Office.

DISCUSSION

The protester argues that the agency failed to perform a proper realism evaluation of Sodexo’s price proposal and contends that the awardee’s price is insufficient to perform the required services. Protest at 5. The protester also argues that Sodexo’s low prices demonstrate the firm’s lack of understanding and appreciation for the work required by the RFP and represents an unacceptable performance risk to the government.⁴ Id. at 8. In this regard, Resource contends that only its proposed price is realistic.

Where, as here, the award of a fixed-price contract is contemplated, a proposal’s price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. However, an agency may provide in the solicitation for a price realism analysis for such purposes as measuring an offeror’s understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide goods or services at little or no profit. The depth of an agency’s

⁴ Resource also protested that the agency failed to conduct meaningful discussions with Resource. Protest at 8. The agency specifically responded to this issue in its report. Resource abandoned this ground or protest, when it did not address in its comments the agency’s response to the protester’s arguments. See Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.

price realism is a matter within the sound exercise of the agency's discretion. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5. In reviewing protests challenging price realism evaluations, our focus is whether the agency acted reasonably and in a manner consistent with the terms of the solicitation.

Here, the record shows that the agency conducted a reasonable price realism analysis. The Air Force compared Sodexo's pricing to the IGE and conducted price discussions with Sodexo with respect to instances where Sodexo's pricing appeared to be low in comparison to the IGE. See AR, Tab 20, Proposal Evaluation Report, at 23. In response, Sodexo revised some of its pricing and verified that its CLIN level pricing was current, accurate and complete. In assessing Sodexo's discussion responses and proposal revision, the SSEB further analyzed the awardee's prices by evaluating cost or pricing data that Sodexo provided in its EN responses and comparing it to the proposed pricing of the next two lowest priced offerors. The agency found that Sodexo had anticipated and accounted for associated costs in support of work requirements and had demonstrated its understanding of the requirements. Id. at 24-25.

Resource nevertheless claims that, as the incumbent for approximately 60 percent of this requirement, it can better judge the realism of offerors' pricing. Resource's arguments, however, ignore that the Air Force considered the basis for Sodexo's pricing and found that it not only demonstrated Sodexo's understanding of the requirements, but did not present a performance risk. Although Resource essentially disagrees with the level of scrutiny applied by the agency to Sodexo's low proposed prices, an agency has considerable discretion in determining the nature and extent of required price realism and proposal risk assessments in the context of fixed-price contracts. Team BOS/Naples-Gemmo S.p.A./DeJen., B-298865.3, Dec. 28, 2007, 2008 CPD ¶ 11 at 13. Based on our review of the record, we conclude that Resource's various arguments challenging the agency's analysis and judgments reflect Resource's mere disagreement or dissatisfaction with the agency's determinations, and provide no basis to object to the agency's analysis here.

Resource also complains that the Air Force revised the IGE after evaluating initial proposals and that this revised IGE was used as the basis for finding realistic the pricing by all the other offerors, including Sodexo. Supp. Protest at 3.

IGEs are, by their nature, inexact and agencies may change them after receipt of bids or proposals where a review of the bids or proposals shows that the initial IGE was incorrect in its assessment of the level-of-effort necessary to perform the requirement or in its prediction of fair and reasonable prices as compared to the actual pricing disclosed by competition. TAMS/Fluor Daniel, B-251068, B-251068.2, Mar. 2, 1993, 93-1 CPD ¶ 199 at 4.

We find nothing improper in the agency's revision of the IGE. The agency states that based on the disparity in the pricing of the initial proposals, it reviewed the IGE and concluded that the disparity was primarily attributed to erroneous use of historical pricing paid under the existing contract. Contracting Officer's Statement at 26. The agency stated that the original IGE did not take into account the standardization of custodial services and the economies of scale by the inclusion of two additional facilities. Id. at 27. The revised IGE took into consideration the pricing of offers received in response to the solicitation, pricing obtained through additional market research incorporating historical prices paid by the government for similar items and a comparison of a similar acquisition for custodial services awarded for facilities in Germany with similar levels of service and scope of square footage. Id.

Although Resource argues that none of the agency's reasons support the revised IGE's large price reduction, it has not shown that the agency's revision of the IGE was unreasonable. In this regard, the record shows that the agency's revised IGE was more consistent with the prices proposed by the other competitive range offerors, including an offeror that was the incumbent contractor for approximately 30 percent of this requirement.

The protest is denied.⁵

Lynn H. Gibson
General Counsel

⁵ Resource also argued that Sodexo's and the other two competitive range offerors' proposals should have been found technically unacceptable based upon their low proposed labor hours. Protester's Comments at 17. Resource provides little support or explanation for this argument, other than its statement that these offerors proposed labor hours are too low. We find that this unsupported argument provides no basis to question the technical acceptability of Sodexo's proposal, particularly given our determination finding reasonable the agency's price realism evaluation.