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Decision

Matter of: Solutions by Design Alliant-JV, LLC

File: B-408058.4

Date: September 30, 2013

Gerard F. Doyle, Esq., and Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for the protester.

Brian J. Hundertmark, Esq., and Eric S. Lammers, Esq., Garson Claxton LLC, for the intervenor.

John E. Cornell, Esq., General Services Administration, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of an agency's technical evaluation is denied where the evaluation was reasonable and consistent with the stated evaluation criteria.

2. Protest of an agency's prices evaluation is denied where the evaluation conformed to the terms of the solicitation.

3. Protest challenging an agency's best value determination is denied where the source selection authority considered the evaluated technical merit and prices of respective quotations and decided that the awardee's higher technical merit outweighed the protester's lower price.

DECISION

Solutions by Design Alliant JV LLC (SBD Alliant), of Vienna, Virginia, protests the issuance of a task order to AAC, Inc., of Vienna, Virginia, under task order request (TOR) No. GSA-IO-12-0797, issued by the General Services Administration (GSA) for information technology (IT) services. SBD Alliant challenges the agency's technical and price evaluation and selection decision.

We deny the protest.

BACKGROUND

The TOR, issued under Federal Acquisition Regulation (FAR) Part 16.5 to firms holding contracts under GSA's Alliant government-wide acquisition contract,¹ provided for the issuance of a fixed-price, labor-hour task order for IT support services for a base year and 4 option years. A detailed performance work statement (PWS) described services for a range of IT networks and devices that make up the agency's enterprise IT technology infrastructure. See, i.e., TOR amend. 3, PWS.

Vendors were informed that quotations would be evaluated using a three-phased process. In the first phase, vendors were to make technical submissions describing their concept of operations, experience, and team/organization. TOR amend. 4, at 65-68. The TOR provided that the agency would notify each firm of their phase-one evaluation results including their relative standing. Id. at 66. In the second phase, vendors were to submit technical and price quotations. Id. at 69-77. Technical quotations would be evaluated under the following factors in descending order of importance: technical approach, management approach, and past performance.² Id. at 69. Vendors were informed that only those firms whose quotations were determined to be most highly-rated (considering technical and price) would be invited to participate in the third phase. Id. at 77. In the third phase, the most highly-rated vendors would provide oral presentations, which would be considered as part of the phase-two technical evaluations. Id. at 77-78. Vendors were informed that, following oral presentations, the task order would be issued on a best-value basis, considering technical merit and price, and that the technical factors combined were significantly more important than price. Id. at 64, 78.

With respect to price, the TOR instructed vendors to provide "the price to be charged for each item in Section B [pricing table]," along with the following documentation:

The offeror shall prepare one summary schedule (Schedule B) which provides the Total Not-To-Exceed Amount for each [contract line item number (CLIN)] and the Total Not-To-Exceed Price offered. Along with the summary schedule, the offeror is required to provide full back-up documentation for each CLIN and proposed Task Area.

¹ The Alliant government-wide acquisition contract is a multiple-award indefinite-delivery/indefinite-quantity contract for various information technology services. As the value of this task order under the Alliant contract is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery/indefinite-quantity contracts.

² The technical and management approach factors included subfactors. TOR amend. 4, at 69.

The backup documentation shall provide a rationale for the offeror's proposed CLIN/Prices in accordance with its technical solution and detail the labor categories to be used, labor hours proposed by category and task and any material and equipment costs.

Id. at 61. Vendors were informed that price would be evaluated for realism and reasonableness. Id. at 64.

The schedule B pricing table set out fixed-price and labor-hour CLINs. See id. at 7-10. A number of the CLINs were for required tasks, such as CLINs for transition (CLIN 0001--fixed price), IT service desk³ (CLIN 0005--fixed price), local support (CLIN 0006--fixed price), and server infrastructure support (CLIN 0008--labor hour). Id. at 7-9. Some CLINs were for "as needed" capabilities, including CLINs for planned and unplanned contingency support (Surge Support) (CLIN 00014--fixed price and labor hour), special event and conference support (CLIN 00015--labor hour), and special projects support (CLIN 00017--fixed price and labor). Id. Other CLINs were for "optional services," such as data center operations and maintenance (CLIN 00022--fixed price and labor hour), or for "miscellaneous services," such as travel (CLIN 00026--NTE) and other direct costs (CLIN 00027--NTE). Id. at 10. Vendors were informed that they could provide "a CLIN structure appropriate to their solution." Id. at 61.

In phase one, GSA received technical submissions from 14 firms. Following the agency's evaluation of these technical submissions, only 9 vendors, including SBD Alliant and AAC, submitted technical and price quotations under phase two. GSA selected SBD Alliant and AAC, and two other firms, to make oral presentations to the agency.⁴

Throughout the three-phased evaluation, the agency responded to vendor questions. As relevant here, GSA answered a number of questions pertaining to

³ The solicitation requested various prices for performing the IT service desk function, based upon the amount of contacts or tickets received per month. For example, CLIN 0005AA requested a monthly fixed price for handling 45,000 or fewer contacts, or 35,000 or fewer tickets; CLIN 0005AB requested a monthly price for handling 45,001 to 52,000 contacts, or 35,001 to 40,000 tickets per month. TOR amend. 4, at 7-8.

⁴ Oral presentations consisted of responding to the agency's questions generated as a result of the phase-two evaluation, and responding to a couple of scenarios. Contracting Officer's Revised Statement at 3.

pricing and the pricing table, including the following question (question No. 64) with respect to CLINs 00014, 00015, and 00017 (as-needed CLINs):

QUESTION: In GSA's responses to offeror questions during previous question periods . . . the Government stated that a NTE estimate would be provided for all contractors to use. Will the Government provide a NTE amount for CLINs 00014, 00015, and 00017? If not, can the Government provide an estimated number and duration of unplanned support activities so that the contractor can accurately project these costs?

ANSWER: A Not To Exceed (NTE) amount for these CLINs will not be provided at this time. The estimated value will be based on the awarded proposal and will be added at contract award.

Agency Report (AR), Tab 7, Question/Answer No. 64, at 46.⁵

The agency conducted discussions/clarifications with the vendors.⁶ SBD Alliant's and AAC's revised quotations were evaluated as follows:

⁵ The agency also answered the following question:

QUESTION: Response to [a previous question] says GSA WILL provide a Government-estimated NTE value for all travel and ODC-related CLINs. However no NTE amounts estimated by the Government are provided in the Final TOR. Will the Government please release these estimates? [Two previous answers] state Government NTE estimates will be provided for as-needed capability CLINs/Surge CLINs, yet we cannot find these estimates in the Final TOR. In summary, [four previous answers] all make mention of Government provided NTE Estimates, although we cannot find these estimates in the TOR. Will the Government consider updating Section B to include the NTE Estimates to be used for pricing purposes?

ANSWER: A Not To Exceed (NTE) amount for these CLINs will not be provided at this time. The estimated value will be based on the awarded proposal and will be added at contract award.

Agency Report, Tab 7, Question/Answer No. 107, at 54.

⁶ GSA contends that all its communications with vendors were clarifications. However, vendors were allowed to revise their quotations, including providing revised pricing. See Contracting Officer's Revised Statement at 4.

	SBD Alliant	AAC
Technical Approach	Acceptable	Highly Acceptable
Management Approach	Acceptable	Acceptable
Past Performance	Highly Acceptable	Highly Acceptable
Overall Rating (Risk)	Acceptable (Medium)	Highly Acceptable (Low)
Evaluated Price ⁷	\$163,012,512	\$190,451,354

Contracting Officer's Revised Statement at 4.

GSA's price evaluation considered only the mandatory CLINs in determining the vendors' evaluated price; the evaluated price did not include the as-needed or optional CLINs (such as CLINs 00014, 00015, and 00017). Id. at 5. GSA decided that AAC's quotation reflected the best value to the government, and the task order was issued to that firm. Id.

SBD Alliant protested to our Office, challenging the agency's technical and price evaluations of the firms' quotations and its source selection decision. In particular, the protester complained that AAC had not provided NTE prices for all the as-needed CLINs (such as, CLINs 00014, 00015, and 00017), and therefore AAC's quotation was unacceptable. See Supp. Protest, B-408058.2, at 12. After filing its initial agency report, GSA decided to take corrective action by reevaluating the quotations and making a new selection decision. We dismissed the protest as academic. Solutions by Design Alliant JV LLC, B-408058, B-408058.2, Apr. 25, 2013.

As a result of its reevaluation of quotations, the vendors' overall technical ratings did not change. The vendors' evaluated prices increased, however, reflecting GSA's consideration of all of the CLINs in its price evaluation, including the as-needed CLINs for which AAC had not provided NTE prices.⁸ To determine AAC's price for

⁷ The agency's price evaluation evaluated each quotation using two different price scenarios based on different levels of IT service desk usage (low and high). The evaluated price in this table is for the "best case" scenario, that is, the "low" level of usage.

⁸ SBD Alliant provided not-to-exceed prices for CLINs 00014, 00015, and 00017. AAC and the two other phase-three vendors did not provide prices for these CLINs. Contracting Officer's Revised Statement at 4. However, AAC's schedule B, pricing table, provided references to its labor rates and to question/answer No. 64 under CLINs 00014, 00015, and 00017.

CLINs 00014, 00015, and 00017, GSA multiplied AAC's NTE prices for local support (CLIN 0006) by either 1 percent or 2 percent.⁹ In determining the protester's evaluated price, GSA used SBD Alliant's submitted NTE prices for these CLINs. AR, Tab 23, Best Value Determination, at 41. AAC's and SBD Alliant's evaluated NTE prices for CLINs 00014, 00015, and 00017 were the following:

CLIN	SBD Alliant	AAC
00014	\$700,000	\$1,179,607
00015	\$230,000	\$589,803
00017	\$35,000,000	\$1,179,607

AR, Tab 22b, Price Abstracts and Analysis, at 2. The vendors' revised evaluated prices were as follows:

	SBD Alliant	AAC
Evaluated Price ¹⁰	\$249,454,571	\$252,517,484

AR, Tab 23, Best Value Determination, at 47.

The contracting officer, who was the source selection authority (SSA), again determined that AAC's quotation represented the best value for the agency. Specifically, the SSA found that AAC's lower risk and more innovative solution, outweighed SBD Alliant's slight price advantage. AR, Tab 23, Best Value Determination, at 49. The SSA noted in this regard that SBD Alliant was only lower priced under the scenario where the agency uses a "high" level of IT service desk help. The SSA concluded that under the more likely scenario, in which there was less use of the IT service desk, AAC's quotation actually reflected a lower evaluated price. Id. at 50.

This protest followed a debriefing.

⁹ This was the same methodology used by the agency to compute its independent government estimate for these CLINs. AR, Tab 23, Best Value Determination, at 42.

¹⁰ As before, the agency's price reevaluation evaluated each quotation using different price scenarios. In the reevaluation, the agency assessed prices using three different levels of IT service desk usage (low, average and high). The evaluated price in this table is for the "worst case" scenario, that is, the "high" level of usage.

DISCUSSION

SBD Alliant makes numerous arguments challenging the agency's technical and price evaluation of SBD Alliant's and AAC's quotations, and GSA's selection decision. We have considered all of the protester's arguments, although we address only the primary ones, and find that none provide a basis to sustain the protest.

Technical Evaluation

SBD Alliant complains that GSA improperly evaluated AAC's quotation with respect to the solicitation requirement that vendors provide "a set of definitions" to "address the distinction between activities that should be considered routine and within the scope of the [fixed-price] elements of the PWS and activities that . . . are beyond the routine and should have additional planning and resources." See TOR amend. 3, PWS, at 36 n.1. In this regard, SBD Alliant contends that AAC did not provide any sort of distinction between routine O&M work (as required under CLIN 0006) and special projects (as required under CLIN 00017). SBD Alliant also contends that GSA treated the vendors unequally in evaluating their quotations with regard to the required set of definitions because SBD Alliant provided "a comprehensive set of definitions," while AAC did not, and yet AAC received a higher technical rating under the technical approach factor. Protester's Comments at 22.

In reviewing protests challenging the evaluation of quotations or proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. General Dynamics C4 Sys., Inc., B-406965, B-406965.2, Oct. 9, 2012, 2012 CPD ¶ 285 at 6. A protester's mere disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. JSR, Inc., B-405463, Nov. 8, 2011, 2011 CPD ¶ 265 at 4.

Here, the record shows that AAC did, in fact, include definitions distinguishing between routine activities and activities that require additional planning and resources. For example, AAC's technical quotation provides definitions that distinguish between certain kinds of small and large support, where the latter requires additional planning and resources. See AAC's Technical Quotation, at 17. In this regard, the agency's evaluators found that AAC provided "a good definition of routine/non-routine IMAC/Cabling and speaks to their O&M . . . support for project work throughout their proposal." AR, Tab 19, Technical Evaluation, at 285. The evaluators also found, however, that AAC did not provide "a clear set of definitions for routine and non-routine project work," and noted this failure as a weakness in AAC's proposal. Id. Although SBD Alliant disagrees with the agency's decision that AAC's quotation adequately addressed this solicitation requirement (albeit with a weakness), this does not show that the agency's judgment was unreasonable.

SBD Alliant also complains that GSA disparately evaluated the protester's quotation under the technical approach factor, where SBD Alliant's quotation received a lower evaluation rating despite the firm's allegedly more comprehensive set of definitions. There is no merit to this contention. SBD Alliant's quotation was also found to have a weakness under the technical approach factor with respect to the firm's set of definitions for routine and non-routine project work. See id. at 267. In any event, the record shows that the weaknesses associated with the firms' sets of definitions were only one aspect of the overall technical approach factor ratings.

Price Evaluation

SBD Alliant also argues that GSA should have rejected AAC's quotation because AAC did not provide NTE prices for CLINs 00014, 00015, and 00017, as required by the solicitation. In this regard, SBD Alliant points to language in the solicitation stating that vendors "shall prepare" one pricing table "which provides the Total Not-To-Exceed Amount for each CLIN." See TOR amend. 4, at 61.

The agency and intervenor disagree that vendors were required to submit NTE prices for every CLIN. They point to language in the solicitation informing vendors that the solicitation's pricing table was merely a suggested table, and that the NTE prices for travel (CLIN 00026) and other direct costs (CLIN 00027) would be added "at the time of contract award." See id. at 7. The agency also notes that the agency's responses to vendors' questions (see above) indicated that vendors were not required to provide NTE prices for CLINs 00014, 00015, and 00017, but that these prices would be added by GSA at the time of award.¹¹ See Legal Memorandum at 6.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

¹¹ Although it does not appear that GSA incorporated its answers to vendor questions into the solicitation, we have found that written information, such as these questions/answers, disseminated by the contracting officer during the course of the procurement to all vendors, operates as an amendment to the solicitation. See Linguistic Sys., Inc., B-296221, June 1, 2005, 2005 CPD ¶ 104 at 2. There is no contention here that GSA's questions/answers did not serve to amend the solicitation.

Here, the solicitation, as amended and read as whole, was patently ambiguous with respect to the anticipated pricing and evaluation of CLINs 00014, 00015, and 00017. That is, although the solicitation instructed vendors to provide an NTE price for each CLIN, see TOR amend. 4, at 61, vendors elsewhere were informed first that GSA would provide NTE amounts for CLINs 00014, 00015, and 00017, and then that GSA would not provide NTE amounts for these CLINs, but that NTE prices would be inserted at the time of award. See, e.g., Agency Report (AR), Tab 7, Question/Answer No. 64, at 46. In this regard, SBD Alliant was the only one of the four phase three vendors to provide a NTE price for every CLIN. Contracting Officer's Revised Statement at 5. Moreover, the solicitation did not indicate to vendors whether or how the agency would evaluate CLINs 00014, 00015, and 00017, particularly with respect to a vendor that did not provide NTE prices for these CLINs.

Despite the obvious ambiguity in the amended solicitation with respect to pricing and evaluating these CLINs, neither SBD Alliant nor any other vendor protested the terms of the solicitation to our Office prior to the closing time for receipt of quotations, as required by our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(1) (2013). Where a patent ambiguity is not challenged prior to submission of solicitation responses, we will not consider subsequent untimely arguments asserting the protester's own interpretation of the ambiguous provisions. Marine Group Boat Works, LLC, B-404277, B-404277.2, Jan. 19, 2011, 2011 CPD ¶ 23 at 4; Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 8; Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10. An offeror or vendor that chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a way inconsistent with one of the possible interpretations. Wackenhut Servs., Inc., B-276012.2, Sept. 1, 1998, 98-2 CPD ¶ 75 at 5.

SBD Alliant also complains that comparing its proposed NTE price for CLIN 00017 with the ceiling price evaluated for AAC under this CLIN was unreasonable. Specifically, SBD Alliant argues that such a comparison fails to provide for "a common basis" to evaluate price quotations. See Protester's Comments at 8. SBD Alliant contends that GSA should not have relied upon the protester's proposed NTE price for CLIN 0007, but should have calculated a ceiling price for this CLIN in the same manner that it did for AAC.¹² See id. at 9.

Agencies are required to consider cost or price to the government in evaluating competitive proposals. 41 U.S.C. § 3306(c)(1)(B) (2011); see Kathpal Tech., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283137.3 et al., Dec. 30, 1999, 2000 CPD ¶ 6

¹² SBD Alliant does not contend that the methodology employed by GSA to calculate AAC's ceiling prices for CLINs 00014, 00015, and 00017 was unreasonable.

at 9. While it is up to the agency to decide upon some appropriate, reasonable method for proposal evaluation, the method chosen must include some reasonable basis for evaluating or comparing the relative costs of proposals, so as to establish whether one offeror's proposal would be more or less costly than another's. See Aalco Forwarding, Inc., et al., B-277241.15, Mar. 11, 1998, 98-1 CPD ¶ 87 at 11.

We cannot say from the record here that GSA's consideration of SBD Alliant's NTE price for CLIN 00017, and the calculation of a NTE price under this CLIN for AAC, was unreasonable. SBD Alliant's arguments ignore the fact that the solicitation, reasonably read, allowed vendors to choose whether to submit NTE prices for CLINs 00014, 00015, and 00017, and that SBD Alliant chose to provide an NTE price for CLIN 00017, which GSA then used in its evaluation. Alternatively, AAC chose not to submit an NTE price for this CLIN, and, in response, GSA calculated a price, which was incorporated into the contract as awarded. See AR, Tab 24, AAC Award, at 13. In short, the agency's evaluation responded reasonably to the choices the companies made in submitting, or not submitting, NTE prices for this CLIN.

In our view, the companies here had ample notice that the solicitation remained ambiguous with respect to whether and how firms were to quote the NTE price for CLIN 00017. The different approaches taken by SBD Alliant and AAC underscore that the ambiguity remained unresolved. Since we conclude that the agency adopted a reasonable approach to the widely-differing quotations under this CLIN, we will not, at this late juncture, adopt SBD Alliant's view that its approach was the only reasonable response. We also note for the record that all of the other competitors in phase three adopted AAC's approach of not providing NTE prices for CLIN 00017.

SBD Alliant raises a number of other challenges to the agency's evaluation of AAC's price quotations, including that GSA failed to recognize the "indeterminate" nature of AAC's prices.¹³ Protest at 35. This objection relates to the protester's concern that AAC's "set of definitions" was not adequate for the agency to determine which services will be performed under each CLIN. However as explained above, the agency found that both AAC's and SBD Alliant's set of definitions were adequate, although both firms were found to have weaknesses. Moreover, the protester's concerns with how AAC may ultimately perform the task order is a matter of contract administration that we will not consider.

¹³ SBD Alliant also complains that GSA did not consider whether the submission of fixed prices was more advantageous than labor-hour prices. The protester has not identified any provision in the solicitation requiring such an analysis.

Best Value Decision

SBD Alliant also objects to the agency's selection decision, complaining that the SSA did not identify any particular merit in AAC's quotation that was worth paying a price premium.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Client Network Servs., Inc., B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9.

Here, the record supports the adequacy and reasonableness of the agency's selection decision. In performing the cost/technical tradeoff analysis, the SSA considered the firms' respective technical merit and price. The SSA found that AAC's technical approach "more thoroughly supports GSA's goals and objectives, particularly with regard to the amount of innovation," while SBD Alliant's quotation demonstrated "only a limited amount of innovation and maintains the status quo in many respects." See AR, Tab 23, Best Value Determination, at 49-51. The SSA also noted SBD Alliant's overall medium risk rating (as compared to AAC's overall low risk rating), which was based upon a number of weaknesses evaluated in SBD Alliant's technical solution. Id. at 49. The SSA also considered SBD Alliant's \$3.1 million (or 1 percent) price advantage under the "worst" case scenario, but found that AAC's technical merit outweighed this slight price advantage. The SSA further noted that under a "best" case scenario, AAC's performance of the task order may result in a lower price than SBD Alliant's. Id. at 52. Although SBD Alliant disagrees with the SSA's judgment, this does not show it to be unreasonable.

The protest is denied.

Susan A. Poling
General Counsel