

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

Decision

Matter of: Graybar

File: B-410788

Date: February 19, 2015

Ronald Drescher for the protester.

Nicole M. Franchetti, Esq., Department of Defense, for the agency.

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DIGEST

Protest of elimination of protester's proposals from the competitive range is denied where the record shows that agency reasonably concluded that the proposals were not among the most highly rated.

DECISION

Graybar, of Lanham, Maryland, protests the exclusion of its proposals from the competitive range under request for proposals (RFP) No. SPM8E3-14-R-0005, issued by the Defense Logistics Agency under the Maintenance, Repair, and Operations Tailored Logistics Support Prime Vendor Program. The protester challenges the evaluation of its proposals under each of the evaluation factors.

We deny the protest.

BACKGROUND

The RFP provided for award of two 5-year, fixed-price, indefinite-delivery/indefinite-quantity contracts for maintenance, repair, operations supply services, and related incidental services, with one award in each of two zones in the South Central Region of the United States. RFP at 6, 29. The guaranteed minimum contract value for Zone 1 (Texas, Louisiana) was \$3 million and the maximum was \$225 million, while the minimum for Zone 2 (Colorado, New Mexico, Oklahoma, Kansas, and Arkansas) was \$2 million and the maximum was \$157.5 million. *Id.* at 6. Offerors could propose for either or both of the zones. Award was to be made to the offerors whose proposals represented the best value to the government considering the following factors: past performance; technical merit, including

subfactors (in descending order of importance) for product sourcing, distribution/delivery, and socio-economic objectives; and price. Id. at 71. Past performance was more important than technical merit, while the non-price factors combined were significantly more important than price. Id.

With respect to past performance, the RFP advised that the government would evaluate the degree to which the offeror met the terms of delivery, quality standards, socio-economic goals, and was able to achieve customer satisfaction in its performance of past contracts. Regarding technical merit, the RFP required offerors to provide “written evidence” for all carriers, distribution centers, and consolidation points that the offerors planned to utilize in the performance of the contract or that were referenced in the proposal. Id. at 62. Offerors also were required to describe their purchasing system, in particular the policies and procedures that ensure that all purchase orders and subcontracts contain all flow down clauses, and that proper types of subcontracts are selected. Id.

Graybar was one of several offerors to submit proposals; the protester offered the same three past performance references for both zones. Graybar Zone 1 Proposal at 5; Graybar Zone 2 Proposal at 5. The agency assigned Graybar’s proposals for both zones a rating of satisfactory confidence for past performance, with no strengths and the following weaknesses: failure to meet the proposed fill rate; failure to meet certain socio-economic subcontracting goals; failure to meet on-time delivery goals; and failure to submit information on its contractual subcontracting goals and the actual subcontracting performance. Zone 1 Technical Evaluation Report 64-72; Zone 2 Technical Evaluation Report at 64-72. Graybar’s proposals were evaluated as acceptable under the product sourcing subfactor, with two strengths and the following two weaknesses: the proposals did not address policies and procedures to ensure that the purchase orders and subcontracts contain all flow down clauses; and the proposals did not address procedures to ensure that proper types of subcontracts are selected. Zone 1 Technical Evaluation Report at 76; Zone 2 Technical Evaluation Report at 76. Graybar’s proposals were evaluated as acceptable under the distribution/delivery subfactor, with one strength and one deficiency--the proposals did not provide written evidence of all proposed carriers, distribution centers, and consolidation points. Zone 1 Technical Evaluation Report at 80; Zone 2 Technical Evaluation Report at 80. Graybar’s proposals were evaluated as good under the socio-economic objectives subfactor of the technical merit factor, the least important subfactor, with no strengths, weaknesses, or deficiencies. Zone 1 Technical Evaluation Report at 82; Zone 2 Technical Evaluation Report at 82. Graybar’s proposals received an overall technical merit rating of acceptable. Zone 1 Technical Evaluation Report at 83; Zone 2 Technical Evaluation Report at 83.

Graybar's proposals were not among the most highly ranked, in terms of technical merit and past performance, and Graybar's prices were among the highest received by the agency.¹ Competitive Range Determination at 19, 22. Given Graybar's relatively high prices, and its overall rating of only acceptable for technical merit, Graybar's proposals were excluded from the competitive range as being not among the most highly rated proposals. Id. at 19-23. This protest followed.

DISCUSSION

Graybar challenges the reasonableness of the agency's exclusion of Graybar's proposals from the competitive range, asserting that the agency improperly evaluated proposals under the past performance, technical merit, and price factors. Our Office will review an agency's evaluation and exclusion of proposals from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Cylab Inc., B-402716, July 13, 2010, 2010 CPD ¶ 163 at 4. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation (FAR) § 15.306(c)(1); see Avar Consulting, Inc., B-410308, Dec. 8, 2014, 2014 CPD ¶ 362 at 4; General Atomics Aeronautical Sys., Inc., B-311004, B-311004.2, Mar. 28, 2008, 2008 CPD ¶ 105 at 5. A protester's mere disagreement with an agency's evaluation and competitive range judgment does not establish that the agency acted unreasonably. CEdge Software Consultants, LLC, B-409380, Apr. 1, 2014, 2014 CPD ¶ 107 at 6. Here, we find the exclusion of Graybar's proposals from the competitive range to be reasonable. We have considered all of Graybar's arguments and discuss the most significant arguments below.

Graybar challenges the agency's assessment of a proposal weakness under the product sourcing subfactor of the technical merit factor for failure to specify what types of subcontracts would be selected. In this regard, the solicitation required each offeror to "describe its purchasing system," including the "[p]rocedures to ensure that proper types of subcontracts are selected." RFP at 62.² The

¹ Because Graybar proceeded with its protest pro se, and therefore no protective order was issued in this protest, protected information cannot be included in this decision. Accordingly, our discussion of some aspects of the evaluation is necessarily general in nature in order to avoid reference to non-public information. Moreover, consistent with the ongoing status of this procurement, information such as the number of offerors and the exact relative ranking of those offerors has been excluded from our decision. Our conclusions, however, are based on our review of the entire record, including non-public information.

² While the RFP does not ask offerors to identify the types of subcontracts that they will enter into, we think that this consideration was reasonably encompassed in the
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solicitation further required offerors to furnish “fixed Acquisition Ceiling Prices” for “Price Evaluation Lists (PEL)” of items illustrative of types of supplies “that have been provided and potentially will be required of the awardee to provide to customers in their respective zones.” RFP at 4. However, the ultimate pricing for delivery orders under the contract for PEL items was to be based on market conditions at the time and competitive subcontractor quotes. Id. at 6. As a result, the cost to the government for such supplies will depend on the costs to the contractor in acquiring the supplies.

While Graybar asserts that all of the contracts that it enters into with suppliers are fixed-price, we agree with the agency that it was not clear from Graybar’s proposals that this would be the case during the contemplated contract. As noted by Graybar, it included in its proposals a “common quote request form” which requested a “DELIVERED PRICE (TOTAL)” from suppliers. See Zone 1 Proposal at 13-14; Zone 2 Proposal at 13-14. However, while this request form seems to reflect a request for a fixed price, Graybar’s proposals also stated that “Graybar has established procedures to ensure proper types of subcontracts are selected,” id., which suggests that several types of subcontracts were possible. Given the ambiguity in this regard, we find reasonable the agency’s concern that it could not clearly ascertain what types of subcontracts would be used in the performance of the contemplated logistics contract. See Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3 (it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency). Accordingly, we see no basis on which to question this evaluated weakness.

Graybar also protests the agency’s assessment of a deficiency, under the distribution/delivery subfactor of the technical merit factor, for failure to provide written evidence of all carriers, distribution centers, and consolidation points. In this regard, the solicitation provided as follows:

For all carriers, distribution centers and consolidation points that are planned to be utilized in the performance of any resultant contract and are listed as part of the response to this factor, provide written evidence. Clearly indicate the type of transportation, distribution or consolidation services being provided. Written evidence consists of a

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requirement to ensure that the proper type of subcontracts are selected. See MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 3 (noting that an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria).

letter or e-mail from the supplier/subcontractor, that states intent to provide services to the offeror in the event of contract award or shows an existing agreement whereby the supplier/subcontractor is already supplying the services.

RFP at 62.

The agency acknowledges that the evaluated deficiency was overbroad and should have applied only to transportation services providers or carriers, and not to distribution centers and consolidation points. Decl. of Contracting Officer ¶ 7. In this regard, Graybar proposed to make deliveries by “Graybar fleet, UPS, or other local providers” in the case of stock material, and to “coordinate with our suppliers to define optimized load plans and select the best carrier and the best transportation mode” for non-stock shipments. See Zone 1 Proposal at 13-14; Zone 2 Proposal at 13-14. It is undisputed that, as found by the evaluators, Graybar’s proposal failed to include the required written evidence of its relationships with the other, non-Graybar carriers it proposed to rely on in delivering supplies. See Comments on AR at 7. As a result, the agency was concerned as to whether Graybar would have access to the variety of transportation resources necessary in order to ensure on-time delivery of supplies. Decl. of Contracting Officer ¶¶ 7, 10. Furthermore, we see no basis to question the contracting officer’s assertion that limiting the scope of the deficiency to transportation services providers or carriers would not remove the deficiency or the overall acceptable rating for this subfactor. Id. Thus, we find no basis to uphold the protester’s challenge to the evaluation in this regard.

Finally, Graybar challenges the agency’s price evaluation methodology, asserting that, “[b]ecause the scope and type of products sold under the DLA contract are so varied, the PEL items do not reflect a large enough sample of the goods under the contract to validate the pricing as representative of all of the purchases under the contract.” Protest at 4. The RFP, however, described the PEL as a representative sample of the items to be purchased, see RFP at 5, 42, 67, and clearly provided that the prices provided on the PEL would serve in part as the basis for the price evaluation. Id. at 74. To the extent that the protester attempts to challenge the solicitation’s price evaluation scheme in this regard, its protest is untimely; our Bid Protest Regulations require challenges to alleged apparent solicitation improprieties to be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (2014).

As discussed above, we see no basis on which to question the reasonableness of the agency’s past performance, technical merit, or price evaluation. The relative rankings, therefore, remain unchanged, with Graybar’s proposals not among the

most highly technically rated, but among the most high priced. Competitive Range Determination at 18-24. Given the relative standing of Graybar's proposals, considering both non-price and price factors, we further see no basis on which to question the reasonableness of the agency's determination that Graybar's proposals had no realistic prospect of being chosen for award and should be excluded from the competitive range as not among the most highly rated.

The protest is denied.

Susan A. Poling
General Counsel