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

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Decision

Matter of: Goel Services, Inc. in association with Grunley Construction Co., Inc.

File: B-404168

Date: January 12, 2011

Paul V. Waters, Esq., and Erin A. Behbehani, Esq., The Waters Law Firm, PLLC, for the protester.

Andrew Brannick, Esq., Lisa Marie Golden, Esq., Department of Defense, for the agency.

Richard P. Burkard, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging evaluation of protester's technical proposal is denied where agency's evaluation is reasonable and supported by the record.
 2. Under solicitation providing for the award of a fixed-price contract, protest that agency impermissibly evaluated protester's low price as creating performance risk is denied, where solicitation sought specific cost and price information and the solicitation, under the technical factor, advised that the offeror's understanding of the work and proposed cost effectiveness would be evaluated.
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DECISION

Goel Services in association with Grunley Construction Co., Inc. (Goel/Grunley), of Washington, D.C., protests the award of a contract to Beltsville Industries Group, Inc. (BIG), of Beltsville, Maryland, under request for proposals (RFP) No. HQ0034-10-R-0097, issued by the Department of Defense (DOD) for the cleaning and repair of exterior limestone facades of the Pentagon. Goel/Grunley protests the agency's evaluation of its price and technical proposals.

We deny the protest.

BACKGROUND

The RFP contemplated the award of a fixed-price contract to clean and repair two exterior limestone facades at the Pentagon (identified in the solicitation as facades "E" and "F"), and repair weathered and deteriorated masonry joints. RFP at 3;

RFP, Statement of Work, at 50. The work to be performed included, but was not limited, to the following:

Repair **all** surface cracks/fissures, chipped surfaces Remove and repair **all** weathered and deteriorated mortar from masonry/stone joints including all sides of columns, porticos, stairs, stairway walls, abutments, cornices Replace **all** deteriorating or failing expansion joints as required. . . . Repair and replace **all** coping stone and lead coated copper flashing as required. . . . Repair **all** failing existing patches. . . . Correct **all** misaligned stones. . . . [and] Abate and safely remove any asbestos or other hazardous materials.

RFP, Statement of Work, at 50-51¹ (emphasis in original). The work required by this RFP represented the third phase of the cleaning and repair effort; BIG was the incumbent contractor for the second phase. Because the Pentagon has been designated as a historical landmark and the facades are a historical element of the Pentagon, the RFP stated that it was important to preserve “the historic intent of the exterior make up to the greatest extent possible.” Id. at 50. The work was required to be completed in 100 calendar days. Id.

The RFP provided that award would be made to the offeror whose proposal represented the best value to the Government. RFP at 35. The solicitation identified three evaluation factors: technical, past performance, and cost/price. Id. The technical factor in turn consisted of two equally weighted subfactors: management approach and technical approach. Id. The RFP stated that the technical and past performance factors were of equal importance and that the cost/price factor was slightly less important than the other two factors. Id.

With respect to the management approach subfactor, the RFP stated that the agency would evaluate, among other things, the offeror’s proposed project organization, key personnel, and major subcontractors. Id. With respect to the technical approach subfactor, the RFP stated that the agency would evaluate “the offeror’s technical understanding of the work,” its ability to provide the requirements, and its ability to meet the schedule; offerors were also to demonstrate the efficiency and cost effectiveness of their proposed approaches. Id. at 31, 36.

With respect to the cost/price factor, the RFP provided that price proposals would be evaluated for reasonableness using one or more of the price analysis techniques in Federal Acquisition Regulation (FAR) § 15.404-1(b). Id. at 37. The RFP also required that offerors provide all direct and indirect costs in separate price proposal summaries for facades E and F, to include design, labor, materials, equipment, bonding, overhead, and profit. Id. at 32-33. The RFP required further that offerors

¹ Page numbers refer to the BATES numbers in the Agency Report (AR).

provide “all necessary supporting documentation for cost breakdown of design, labor, materials, and equipment.” Id. at 33. Finally, the RFP “encouraged” offerors “to submit any other price or financial information that may be helpful in the understanding and evaluation of the Price Proposal.” Id. at 32.

Three offerors, including Goel/Grunley and BIG, submitted proposals. A technical evaluation team (TET) evaluated offerors’ proposals under the technical subfactors and assigned adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable. (An overall rating for the technical factor was not assigned.) The contract specialist evaluated past performance and assigned confidence ratings of substantial, satisfactory, limited, no, or unknown confidence.

With regard to the evaluation of Goel/Grunley’s proposal, the TET rated the proposal acceptable for the management approach subfactor and good for the technical approach subfactor. AR, Tab 9, Technical Evaluation Summary, at 315-16. The contract specialist assigned a rating of satisfactory confidence to the proposal for the past performance factor. AR, Tab 11, Past Performance Evaluation Summary, at 331. Concerning price, Goel/Grunley initially did not include the required cost breakdown or supporting documentation in its proposal, but instead included only a lump sum amount per facade. In response to requests from DOD, Goel/Grunley subsequently provided cost breakdown information. The agency evaluated this information and determined that labor and other costs were “very low” compared to the government estimate.² AR, Tab 13, Source Selection Decision, at 376. Goel/Grunley’s total proposed price for both facades of [deleted] was lower than the government estimate of [deleted] and the other offerors’ prices,³ and was found to pose a “potential risk of failure because of the low cost of labor.” Id. at 377-78; Tab 11, Price Evaluation Summary, at 360.

In contrast, BIG’s proposal received the highest ratings of all offers received and was found to be superior to Goel/Grunley’s proposal under both technical subfactors and the past performance factor. In this regard, BIG’s proposal received ratings of good under the management approach subfactor, outstanding under the technical approach subfactor, and substantial confidence under the past performance factor. AR, Tab 13, Source Selection Decision, at 377. The agency noted that the risk to performance was minimal given that BIG had successfully performed similar repair work as the incumbent contractor. Id. at 378. The total proposed price for BIG’s

² The contracting officer noted, during the evaluation, that confidence in the government estimate was “very high” due to the agency’s experience with the previous two phases of the limestone cleaning and repair project. AR, Tab 13, Source Selection Decision, at 378.

³ The other offerors’ prices were [deleted] than the government estimate. AR, Tab 11, Price Evaluation Summary, at 360.

proposal of \$3,078,504 was [deleted] the government estimate and was found to be reasonable. AR, Tab 11, Price Evaluation Summary, at 360; Tab 13, Source Selection Decision, at 377-78.

In the source selection decision, the contracting officer (who was the source selection authority) determined that

BIG's substantial technical superiority/advantages and its reasonable price . . . when compared to the risks associated with [Goel/Grunley's] unreasonably low price and lower technical and past performance ratings, makes award to BIG the best value for the Government.

AR, Tab 13, Source Selection Decision, at 379. The agency awarded the contract to BIG, and this protest followed.

DISCUSSION

Technical Evaluation

The protester challenges the agency's evaluation of its proposal under each subfactor of the technical factor. It contends that the proposal ratings were too low because the weaknesses identified by the agency were "based upon incorrect statements of fact." Comments at 24. We have carefully reviewed and considered each allegation and argument and find them to be without merit. We specifically address the central allegations below.⁴

In reviewing a protest against an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13. A protester's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Id.

⁴ Goel/Grunley also initially protested the reasonableness of the past performance rating assigned to its proposal. The agency fully responded to the protest arguments in its agency report. In its comments, the protester failed to respond to the agency's detailed report on this issue other than to assert generally that "[t]here is no reasonable basis for the Agency's ratings for the . . . Past Performance factors" and that Goel/Grunley's past performance was similar to BIG's. Comments at 24. We have reviewed the record and find that it establishes the reasonableness of the evaluation ratings and supports the agency's determination that BIG's past performance was superior to Goel/Grunley's.

Under the first technical subfactor, management approach, the agency assigned a rating of acceptable to Goel/Grunley's proposal, finding three weaknesses. First, the agency found that the "limits of responsibility" for Goel/Grunley's subcontractors were unclear in the proposal and there was no indication that Goel/Grunley had worked with its primary subcontractors on previous projects. Second, the agency noted that Goel/Grunley's proposal did not include a plan to recruit, hire, and retain qualified personnel, but merely stated that the firm had sufficient personnel. Third, the agency determined that Goel/Grunley's proposed [deleted] lacked previous experience with work similar to limestone cleaning/repairs, and Goel/Grunley's proposed [deleted] had less than 1 year of experience. AR, Tab 9, Technical Evaluation Summary, at 315. Goel/Grunley asserts that its proposal adequately addressed each of these concerns.

Although the RFP established page limits for technical factor responses, RFP at 29, the RFP nonetheless required that certain specific information be addressed within those pages. For example, the RFP specifically provided that offerors must "clearly identify the limit of responsibility for subcontractors" and indicate "to what extent your firm has worked with the proposed subcontractors in the past." RFP at 30. In its proposal, Goel/Grunley identified [deleted] as a firm that would perform design work, and [deleted] as a "key subcontractor" that would perform repair work. AR, Tab 6, Goel/Grunley's Proposal, at 257, 261. In response to discussion questions seeking clarification of the subcontractor's role, Goel/Grunley generally stated (in a 2-sentence response) that [deleted] would "supply[] the necessary labor, materials and equipment to complete the scope of work" and that the subcontractor would be directly supervised by Goel/Grunley's project team. AR, Tab 7, Discussion Responses, at 293. When asked to clarify [deleted] authority, Goel/Grunley summarily explained (in a 3-sentence response) that [deleted] contract for design would be held by Goel/Grunley, and that Grunley's vice president would have direct authority over the [deleted] design team. *Id.* at 294. Nowhere in its proposal or subsequent responses did Goel/Grunley describe the extent to which it had worked with these firms in the past. Given that Goel/Grunley's proposal contained only general statements that did not fully address the RFP requirements, we find that it was reasonable for the agency to assess a weakness to the proposal.

The RFP also required offerors to "[d]iscuss your plan to recruit, hire and retain qualified personnel to meet the requirements of this acquisition" in a section of the proposal titled "Management Control Plan." RFP at 30. In a different section of the proposal titled "Risk Mitigation," Goel/Grunley included the following general statement:

[deleted]

AR, Tab 6, Goel/Grunley's Proposal, at 255. Neither this statement nor any other statement or section of the proposal addressed a plan to recruit, hire, or retain

qualified personnel, as required by the RFP. Thus, we find that the agency reasonably considered this aspect of the proposal to be a weakness.

The RFP also required offerors to submit resumes for the proposed project manager, safety officer, and other key personnel. RFP at 30. These resumes were to address, among other things, the key personnel's experience and qualifications, current job title, and proposed position, thereby putting offerors on notice that the agency would evaluate this information. See RFP at 31. The resume of Goel/Grunley's [deleted] shows over 5 years of general construction experience as a [deleted], but as the agency correctly notes, none of these projects involved limestone repair work on a historic building like the work required here. See AR, Tab 6, Goel/Grunley's Proposal, at 231-36. Likewise, the resume of Goel/Grunley's [deleted] shows over 15 years of construction experience as a [deleted], including experience with asbestos abatement and quality control. However, the [deleted] resume shows that he had less than 1 year of experience as a [deleted], where he was responsible for overseeing [deleted]. Id. at 245-47. Although the protester contends that the agency should not have assessed its proposal a weakness for the key personnel's lack of experience, based on our review of the record, the agency's concerns appear to be reasonable and supported by the record.

The protester next objects to the agency's evaluation of its proposal under the second technical subfactor, technical approach. As noted above, the agency assigned Goel/Grunley's proposal a rating of good for this subfactor. AR, Tab 9, Technical Evaluation Summary, at 316. The agency found that Goel/Grunley's "[deleted] for performing the limestone repair is not the most efficient method [of performance] as it does not lend itself well for temperatures in all seasons." Id. at 315. The evaluators were concerned that the proposed [deleted] could delay the schedule in the cold winter months because some of the materials are temperature sensitive. See id.; Tab 13, Source Selection Decision, at 370.

Goel/Grunley contends that this weakness is unwarranted, arguing that the proposal adequately accounted for potential delays. Comments at 23-24. We disagree. The proposal makes clear that the firm intends to perform the work on each facade [deleted]. AR, Tab 6, Goel/Grunley's Proposal, at 258. Although Goal/Grunley clarified during discussions that some work would [deleted], it reiterated its intent to perform [deleted]. AR, Tab 7, Discussion Responses, at 294. The firm stated that it would [deleted], id., and that it would account for weather delays in [deleted]. AR, Tab 6, Goel/Grunley's Proposal, at 255. However, these statements did not satisfy the agency's concern that the [deleted] was not the most efficient way to accomplish the work in the cold winter months. Based on our review of the record, we find that the agency's concerns reflect an accurate understanding of the Goel/Grunley's proposal and that the weakness assessed to the proposal was reasonable.

Price Evaluation

Goel/Grunley next argues that the agency acted improperly by evaluating its proposal for price realism, asserting that the agency evaluated its proposal on the basis of an unstated evaluation factor. The protester argues that, in a fixed-priced environment, the submission of a low price is not improper so the agency's concerns about a too-low price are unreasonable. Furthermore, even if a realism analysis were proper, the protester contends that the agency's analysis was flawed here.⁵ Comments at 15-22.

The agency responds that its analysis was permitted because the RFP required detailed cost and pricing information, and offerors were advised that their understanding of the work would be evaluated elsewhere in the solicitation. AR at 12-13.

Before awarding a fixed-price contract, an agency is required to determine whether the price offered is fair and reasonable. FAR § 15.402(a). An agency's concern in making this determination in a fixed-price environment is primarily whether the offered prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. An agency may, in its discretion, provide for a price realism analysis for the purpose of assessing whether an offeror's price is so low as to evince a lack of understanding of the contract requirements or for assessing risk inherent in an offeror's approach. METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 6. However, offerors competing for award of a fixed-price contract must be given reasonable notice that a business decision to submit a low-priced proposal will be considered as reflecting on their understanding or risk associated with their proposal. Milani Constr., Inc., B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 4; CSE Constr., B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 4-5. Where a solicitation for a fixed-price contract omits a provision for realism but requests detailed cost or pricing information, we have found that an agency may properly consider whether an unreasonably low price poses proposal risk if the solicitation, in either the technical or price factors, provides for the evaluation of an offeror's understanding of the requirements. METAG Insaat Ticaret A.S., *supra*; SEEMA, Inc., B-277988, Dec. 18, 1997, 98-1 CPD ¶ 12 at 5. Conversely, where the solicitation lacks either a technical or price evaluation factor that provides for the offerors' understanding of the requirements, and the solicitation also does not require detailed cost or pricing information, then the agency may not consider whether unreasonably low prices pose proposal risk. Milani Constr., Inc., *supra*; CSE Constr., *supra*.

⁵ The protester also asserts that the agency did not give sufficient weight to price in the evaluation. The record does not support this contention.

As noted above, the RFP here asked for (and the agency repeatedly requested during discussions) direct and indirect cost information to be separately provided for each facade for the following categories: design, labor, materials, equipment, bonding, overhead, and profit. RFP at 32-33. The RFP also required offerors to “provide all necessary supporting documentation for cost breakdown of design, labor, materials and equipment,” and it encouraged offerors to provide “any other price or financial information that may be helpful in the understanding and evaluation of the Price Proposal.” *Id.* Furthermore, the RFP contained an evaluation factor, technical, that required the evaluation of the offeror’s “understanding of the work,” and offerors were informed that their proposals had to “[d]emonstrate the efficiency and cost effectiveness of [their proposed] approach.” *Id.* at 31, 36. Based on this record, we conclude that the RFP provided adequate notice to the offerors that their low prices could be considered as reflecting on their understanding or risk associated with their proposals. See METAG Insaat Ticaret A.S., *supra*.

We also find the agency’s price evaluation to be reasonable. As noted in the source selection decision, Goel/Grunley’s labor costs, overhead, and profit were “very low” as compared to the government estimate.⁶ AR, Tab 13, Source Selection Decision, at 376. In this regard, Goel/Grunley proposed approximately [deleted] fewer labor hours and its overall price was approximately [deleted] percent lower than the government estimate; Goel/Grunley’s overall proposed price was also found to be outside the competitive range. *Id.* at 376, 378. Based on the information requested in the RFP and included in Goel/Grunley’s price proposal, the agency concluded that the low price presented a “potential risk of failure” and increased the probability that the work would not be completed on time. *Id.* at 378. We find nothing improper in this aspect of the agency’s evaluation.

In sum, the protester’s arguments do not call into question the reasonableness of the agency’s best value determination. Based on our review of the record, and after

⁶ As noted above, the agency had “very high” confidence in its government estimate, given its past experience. AR, Tab 13, Source Selection Decision, at 378. Goel/Grunley asserts there are differences between its proposal and the government estimate that render the price evaluation unreasonable. Comments at 20-21; Reply to Supplemental Agency Report, at 6-8. We have reviewed the record and find that the protester’s arguments provide no basis to sustain the protest.

considering all of the protester's arguments, we find that the agency's selection of a higher-rated, higher-price proposal for award was consistent with the evaluation criteria and was reasonable.⁷

The protest is denied.

Lynn H. Gibson
General Counsel

⁷ The protester alleges that the chair of the source selection evaluation board was biased in favor of BIG, and that he gave “[g]reater weight” to BIG’s proposal because BIG is the incumbent contractor. Comments at 24. According to the protester, there is an “inherent conflict of interest” with this individual evaluating BIG’s proposal because he was a project manager during the second phase of the work. *Id.* However, the agency represents that the individual certified that neither he nor his family have any financial or other ties to BIG that could constitute a conflict of interest, Supplemental Agency Report at 15, and the protester has not provided any evidence to establish the existence of a conflict or bias in the evaluation. We will not attribute bias in the evaluation of proposals on the basis of inference or supposition. *Novell Pharm., Inc.*, B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149 at 7. This protest ground is denied.