



Decision

Matter of: Doore Tour Company, Ltd.

File: B-420326

Date: February 1, 2022

Jang Suk Suh, Esq., for the protester.

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DIGEST

Protest that the agency improperly evaluated the protester's price is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Doore Tour Company, Ltd., of the Republic of Korea, protests the award of a contract to Kumkang Express Tour Company, Ltd., also of the Republic of Korea, under request for proposals (RFP) No. W91QVN-21-R-0003, issued by the Department of the Army for shuttle bus services. The protester primarily challenges the evaluation of its price.

We deny the protest.

BACKGROUND

On December 9, 2020, the agency issued the RFP pursuant to Federal Acquisition Regulation (FAR) part 12, acquisition of commercial items, and part 15, contracting by negotiation. Agency Report (AR), Tab 3, RFP.¹ The RFP seeks a contractor to provide

¹ The agency amended the RFP four times; all citations are to the Adobe PDF page numbers of the documents provided by the agency and the protester. We also note that, shortly after Doore filed its protest, our Office issued a protective order pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a), because it appeared that counsel for the protester would require access to proprietary, confidential, or source-selection-

fare-free mass transit shuttle bus services for U.S. military personnel and family members traveling to and from military installations throughout the Korean Peninsula. *Id.* at 68-69.

The RFP contemplates the award of a single fixed-price indefinite-delivery, indefinite-quantity contract for a base period of nine months and four 1-year option periods. RFP at 3, 103. The RFP provides for award on a lowest-price, technically acceptable (LPTA) basis, considering technical, past performance, and price. *Id.* at 112-118. Under the price evaluation factor, the RFP requires offerors to propose prices in Korean Won (W) and provides that proposals would be evaluated to determine fair, complete, reasonable, and realistic pricing. *Id.* at 110-111, 117-118. The RFP notes that “[a]ny underlying assumptions including proposed escalation rates between base and subsequent option periods shall be clearly explained,” and cautions that the agency “may determine that an offer is unacceptable if the option prices are significantly unbalanced.” *Id.* at 117-118.

On or before January 26, 2021, the amended closing date for receipt of proposals, the agency received proposals from 12 offerors, including Doore and Kumkang. The agency established a competitive range and opened discussions on April 21. The discussions letter sent to Doore identified the proposal as technically acceptable and noted concerns with some of Doore’s prices for base period contract line item numbers that were “lower than the [government objective] which is based on the current market prices.” AR, Tab 25, Competitive Range Notification and Discussions Letter for Doore at 1. The agency also contacted Doore by telephone. AR, Tab 2, Contracting Officer’s Statement (COS) at 3; Protest at 4.

On or before April 29, the agency received revised proposals. Of note, Doore revised and further lowered its prices, particularly for the base period. *Compare* AR, Tab 18, Doore Original Price Proposal *with* AR, Tab 21, Doore Revised Price Proposal; Protest, encl. B, Doore Revised Price Proposal. On May 4, the agency asked Doore to clarify its revised base period price; specifically, after the agency asked, “Did you propose 9 months of base year with total price of W1,248,677,820?” Doore responded affirmatively. Protest, encl. C, Emails Between Agency and Doore at 1.

The agency completed its evaluation and selected Kumkang for award. Doore requested and received a debriefing. In the debriefing letter, the agency informed Doore that, while Doore’s total proposed price of W14,781,813,300 was lower than Kumkang’s total proposed price of W14,901,302,566, Doore’s proposal was rejected due to unbalanced pricing. Protest, encl. F, Doore Debriefing Letter at 1-2; AR, Tab 34, Doore Debriefing Letter at 1-2. This protest followed.

sensitive material. Counsel for the protester, however, did not apply for admission to the protective order. While GAO reviewed the entire record in preparing this decision, our discussion of some aspects of the record is necessarily general in order to limit references to non-public information.

DISCUSSION

The protester primarily challenges the agency's evaluation of its price proposal. Specifically, Doore argues that its price "should not [have been] evaluated as 'unbalanced'" and that it "fully explained the reason [for] lower[ing its] pric[e] for the base year period." Protest at 1. The protester also challenges various other aspects of the agency's award decision, including the eligibility of the awardee. *Id.* at 6-8.

The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶ 148 at 7; *Federal Acquisition Servs. Alliant JV, LLC*, B-415406.2, B-415406.3, Apr. 11, 2018, 2018 CPD ¶ 139 at 11.

As a general matter, unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. FAR 15.404-1(g)(1). With respect to unbalanced pricing generally, the FAR requires that contracting officers analyze offers with separately-priced line items or subline items, to detect unbalancing. FAR 15.404-1(g)(2). While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by overstatement of prices because low prices (even below-cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing. See *Crown Point Sys.*, B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 5; *AIS Eng'g, Inc.*, B-410246, B-410246.2, Nov. 21, 2014, 2015 CPD ¶ 5 at 3. Our Office reviews the reasonableness of an agency's determination about whether a firm's prices are unbalanced, and an agency's determination as to whether the unbalanced prices pose an unacceptable risk. *Triumvirate Env'tl., Inc.*, B-406809, Sept. 5, 2012, 2012 CPD ¶ 244 at 5.

As noted above, the RFP provides that "[a]ny underlying assumptions including proposed escalation rates between base and subsequent option periods shall be clearly explained," and cautions that the agency "may determine that an offer is unacceptable if the option prices are significantly unbalanced." RFP at 117-118.

In Doore's debriefing, the agency explained to Doore that the evaluation identified a "significant weakness" in Doore's price proposal that rendered it unacceptable for award. The agency explained that Doore's price was found to be "unbalanced," as follows:

Doore proposed an escalation rate of +102% from the base period to the first (1st) option year. The proposed escalation rate between each of the option periods was consistent at 0.5%. There were no assumptions or other information provided in the proposal to explain the large increase in pricing between the base period and 1st option period. In comparison, the

government estimated escalation at 2% with other acceptable offerors escalating at a rate of 1.5% on average. Your company's proposed prices were therefore considered unbalanced, as your proposed base period price was critically lower than your proposed option years. In addition, your proposed base period price was significantly lower when compared with the Independent Government Estimate (IGE), other competitor base period prices, and market research pricing. Your company's pricing structure creates a scenario where the gap between the base year and the option year was too big (102%). The low amount proposed for the base period and the large change in pricing from the base period to the first option period was unexplained in your proposal, and subsequently was identified as a critical risk for the government on the part of the contracting officer. The contracting officer deemed these issues with your company's pricing as reflective of a failure to comprehend the complexity and risk of the proposed contractual requirements. The unbalanced nature of the pricing caused Doore's proposal to be rejected and not considered for award.

Protest, encl. F, Doore Debriefing Letter at 1-2; AR, Tab 34, Doore Debriefing Letter at 1-2.

The explanation provided in the debriefing is supported by the evaluation documents in the record. See AR, Tab 15, Source Selection Decision Document (SSDD) at 37-40. The agency argues that its evaluation of Doore's price as "unbalanced" was reasonable and consistent with the terms of the RFP. Memorandum of Law (MOL) at 11.

On this record, the agency argues, and we agree, that Doore "did not explain its unbalanced pricing in its proposal; nor did [Doore] explain its pricing when asked to do so in an email dated May 4" about clarifying its base period pricing. MOL at 13. While Doore explains, in its protest, various reasons for "why [Doore] could only lower the base year price, but not for the other option year ones," Protest at 5, Doore has not explained whether or how such explanations, which reflect its business decisions, are reflected contemporaneously in its proposal.

To the extent Doore argues that it "already explained to the [contracting officer] the details during the teleconference" held during the discussions period, we note that such details are not reflected in Doore's revised proposal as documented in the record. As noted above, the agency sent a discussions letter to Doore on April 21, contacted Doore by telephone, and received a revised proposal from Doore on or before April 29. COS at 3; Protest at 4. Without reaching a conclusion with regard to the adequacy of Doore's oral response to the agency's concerns, we note that agencies are required to evaluate proposals, including final proposal revisions, based on the content of the proposal itself. See *Moreland Corp.*, B-291086, Oct. 8, 2002, 2002 CPD ¶ 197 at 3. Thus, an offeror in a negotiated procurement must demonstrate its capabilities within the four corners of its proposal.

In all, while Doore continues to argue that it “cannot fathom” why its base period prices “could be a critical risk” for the agency, Comments at 1-2, it has not established that the agency’s evaluation, based on the revised proposal that it had to review, was unreasonable or inconsistent with the terms of the solicitation or applicable procurement statutes and regulations. Accordingly, this allegation is denied.

As a final matter, because we conclude that the agency reasonably evaluated the protester’s price proposal, we also conclude that Doore is not an interested party to raise other challenges to the award, such as the eligibility of the awardee. An offeror is an interested party if it is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1); *DMS Int’l*, B-409933, Sept. 19, 2014, 2014 CPD ¶ 278 at 6-7. A protester is not an interested party if it would not be next in line for award if we were to sustain its protest. *Resource Title Agency, Inc.*, B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9.

The protest is denied.

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General Counsel