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Comptroller General
of the United States

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Decision

Matter of: EAI Corporation

File: B-283541

Date: December 6, 1999

William B. Barton, Jr., Esq., and William T. Welch, Esq., Barton & Tolle, for the protester.

Richard P. Castiglia, Jr., Esq., McKenna & Cuneo, for Battelle Memorial Institute, an intervenor.

Maj. Robert W. Clark, Department of the Army, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that awardee's proposed pricing was not subjected to an adequate price analysis is denied where record reflects that the analysis was reasonable and in accordance with stated price evaluation methodology set forth in the solicitation.

2. Protest alleging that one area of protester's proposal was misevaluated is denied where record reflects that protester merely disagrees with the agency evaluators.

DECISION

EAI Corporation protests the award of a contract to Battelle Memorial Institute under request for proposals (RFP) No. DABT60-99-R-0011, issued by the Department of the Army for the provision of support services to various organizations located at Fort Leonard Wood, Missouri. EAI alleges that the Army failed to perform a proper price realism analysis with respect to Battelle's proposal and otherwise failed to properly evaluate its technical proposal with respect to proposed support for one of the organizations covered by the RFP.

We deny the protest.

The RFP was issued on June 9, 1999 and closed on July 9. It contemplated the award of a fixed-price, indefinite-quantity contract for a base year with 4 option years against which task orders would be issued following negotiations between the agency and the contractor to provide a variety of services to the U.S. Army Chemical, Military Police and Engineer Schools, Battle Lab, the Test and Evaluation

Coordination Office (TECO), the Smoke Proponency Office and the Joint Service Integration Group (JSIG). RFP §C.3.a.

Award was to be made to the offeror whose proposal represented the best value to the government considering four evaluation factors: (1) technical (most important); (2) managerial (second most important); (3) past performance (equal to managerial); and (4) price. With respect to technical, the RFP instructed offerors, inter alia, to demonstrate their “capability to respond to task orders within a broad scope of work covering all aspects of: Doctrine and Training Development, Training and Training Development, Force Modernization/Acquisition, Battle Lab and General Test and Evaluation Support and support to the [JSIG].” RFP § L.19.1B.2.a.

Offerors were required to submit fixed prices in the form of burdened labor rates for a variety of labor positions. Price proposals, which were not scored, were to be: (1) analyzed for errors, mistakes and omissions; (2) evaluated for unbalanced offers; (3) analyzed to ensure burdened prices were included; (4) evaluated by comparing proposed prices to the government estimate for the base period and option years; (5) analyzed to ensure that the pricing reflects the technical and management proposal; and (6) compared to other proposals. RFP § M.5d.

EAI and Battelle submitted proposals. With respect to the technical proposals, the discriminating factors in the evaluation were Battelle’s excellent ratings for understanding of contract background and purpose of contract; EAI’s proposal was rated good in both these areas. With respect to management proposals, the discriminating factors in the evaluation were Battelle’s excellent rating for organization and management plan; EAI’s proposal was rated good in this area. Four weaknesses were noted in EAI’s proposal: (1) the offeror failed to address support for the Battle Lab; (2) the offeror failed to adequately address TECO support; (3) the offeror failed to adequately describe the organizational structure of its subcontractors; and (4) the offeror failed to adequately describe its own organizational structure. Battelle’s proposal had no weaknesses in these areas and, as a result, was rated higher than EAI’s under the technical and management factors. There were no differences in past performance ratings. Overall, the evaluators rated Battelle’s proposal as “Exceptional” because it fully met the government’s requirements in a way that provided exceptionally low risk, exceptional probability of success, exceptional foresight or exceptional quality. EAI’s proposal was rated as “Good” because it possessed high quality in most respects with a good probability of success and generally exceeded minimum requirements although improvement was possible. Contracting Officer’s Statement at ¶ 3.

The prices submitted by both offerors were determined to be fair and reasonable following an evaluation using each of the six price analysis techniques specified in the RFP. Battelle’s price was \$9,027,648.36, which was [deleted] percent less than the government estimate of \$[deleted]; EAI’s price of \$[deleted] was [deleted]

percent higher. Battelle was awarded the contract on the basis of its higher technical and management ratings and its lower price.

EAI alleges that the Army's price analysis of Battelle's proposal "violated" Federal Acquisition Regulation (FAR) § 15.404-1(b)(2) principally because it did not compare the awardee's proposed prices to previously proposed prices and previous government contract prices for the same and similar items. Specifically, EAI alleges that Battelle offered prices in response to the RFP which were 30 to 50 percent lower than the prices on Battelle's information technology (IT) schedule contract with the General Services Administration (GSA). EAI also alleges that a proper comparison to the government's independent "should cost" estimate would reveal that its own prices were "in line" with the estimate while Battelle's prices were "significantly lower" than that estimate. Also, EAI contends that a more thorough price analysis would have resulted in a finding that Battelle submitted unreasonably low prices for two labor categories that were estimated as being required to perform 57.25 percent of the total labor hours under the contract in an effort to gain the award. EAI contends that this pricing strategy "almost certainly indicates that Battelle intended to buy into the contract or to somehow game the tasks in a way that will shift work away from its loss-leading labor categories." Protester's Comments at 7.

At the outset, we note that the record reflects that the agency did in fact perform the price analysis using all six of the factors listed in the solicitation for that purpose.¹ With respect to the alleged violation of FAR § 15.404-1(b)(2), EAI is mistaken in suggesting that the regulation requires the agency to consider Battelle's schedule contract prices. The regulation merely provides an illustrative list of price analysis techniques which an agency may use; the depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5-6. Further, with respect to the IT schedule, there is nothing in the record to support EAI's assertions that the labor positions covered by that contract are comparable to the positions covered by the RFP.²

Also, we find without merit EAI's suggestion that Battelle's pricing was out of line with the government estimate. As stated above, EAI's price varied by almost the same percentage as Battelle's from the government estimate, albeit in the opposite direction: the protester's price was higher than the estimate while Battelle's was lower. In any event, the deviation of Battelle's pricing from the government estimate

¹ EAI originally disputed this fact as a result of its understanding of the debriefing it received. The agency report rebutted the protester's account and EAI did not further address the matter in its comments.

² In its comments EAI concedes that the schedule labor categories do not precisely match the labor categories of the RFP. Protester's Comments at 5 n.3.

is relatively small and unsurprising given the fact that government estimates are subject to margins of error themselves and, thus, we have no basis for finding that, simply because Battelle's prices were slightly lower than the government estimate, the agency should have concluded that they were unrealistic. See Hughes Georgia, Inc., B-272526, Oct. 21, 1996, 96-2 CPD ¶ 151 at 7.

With respect to the allegation that Battelle "gamed" its offer to obtain the award with the intention of offering low prices for labor categories that are generally used frequently in order to win award, while staffing the work during performance with higher-priced labor categories, the terms of the contract preclude that possibility. Before issuing a task order, the contracting officer issues a Contractor Performance Assignment, to which the contractor replies by preparing a task order execution plan which must identify estimated labor costs and categories. RFP §§ H.5.2.1, H.5.2.2. The government evaluates the plan, which may be accepted without change or may be the subject of further discussions/negotiations. RFP § H.5.2.3. Should the agency and the contractor fail to reach an agreement, the task will be cancelled. RFP § H.6. Thus, the government can ensure that the labor mix to be used on a given task order meets its requirements and the contractor does not have the control over how the task order will be performed, as suggested by EAI. In sum, the protester's objections to the agency's price analysis are without merit.

With respect to the evaluation of its technical proposal, EAI alleges that, in finding that its proposal failed to adequately address support for TECO, the agency placed undue emphasis on the support of an office which was scheduled to close 90 days into contract performance. We review allegedly defective evaluations only to determine whether they were reasonable and consistent with the stated evaluation criteria. The mere fact that a protester disagrees with an evaluation does not render the evaluation unreasonable. Mirada Assocs., B-245974, Jan. 30, 1992, 92-1 CPD ¶ 142 at 2.

The RFP instructed offerors to address their ability to perform general test and evaluation support. RFP § L.19.1B.2.a. While the record reflects that TECO will soon close, its test and evaluation functions will be transferred to other offices to be serviced by the contractor, and EAI does not assert it adequately addressed those functions. Thus, beyond EAI's mere disagreement with the evaluators' emphasis on demonstrating an ability to support the functions, there is no basis to conclude that the evaluation was unreasonable. Moreover, there is no indication of prejudicial over-emphasis in the agency's evaluation of the protester's ability to provide TECO support. The finding to which EAI objects is simply one of four weaknesses found in its proposal. In contrast, Battelle's proposal was found to have no weaknesses.

Thus, even without the weakness complained of, the record does not support a conclusion that EAI's proposal would have been rated as high as Battelle's.

The protest is denied.

**Comptroller General
of the United States**