



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: AST Environmental, Inc.

File: B-291567

Date: December 31, 2002

Richard A. Ciambrone, Esq., Thompson Hine, for the protester.
Mark R. Weidner for Water Quality Systems, Inc., the intervenor.
John D. Inazu, Esq., and Carol A. Satterfield, Esq., Department of the Air Force, for the agency.
Peter Verchinski and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to perform an adequate price realism analysis is denied where agency's price analysis was reasonable and legally sufficient.

DECISION

AST Environmental, Inc. protests the award of a contract to Water Quality Systems, Inc., under request for proposals (RFP) F33601-02-R-9035, issued by the Department of the Air Force for all labor, material, and equipment necessary to clean and monitor oil separators and settling basins at Wright Patterson Air Force Base. Contending that Air Force's price realism analysis was inadequate, AST asserts that Water Quality's proposal should have been rejected because its proposed price was unrealistically low.

We deny the protest.

The RFP contemplated the award of a requirements contract for a base period and 4 option years. Proposals were to be evaluated for technical acceptability, and then, among technically acceptable proposals, award was to be made on a "best value" basis, with a tradeoff permitted between past performance and evaluated price. The RFP stated that the agency would evaluate the proposed prices for realism and reasonableness, and that the agency might reject proposals where the prices were unreasonably high or so low as to indicate a lack of understanding of the work to be performed.

The agency received offers from five firms, including AST (the incumbent contractor) and Water Quality (an incumbent contractor to AST). The agency awarded the contract to Water Quality, and AST protested.

Specifically, AST protests that the Air Force did not follow the evaluation criteria laid out in the solicitation because the agency failed to consider the lack of realism in the prices proposed by the firms who submitted the three lower priced proposals. AST appears to believe that those proposals should have been rejected due to their allegedly unrealistic prices.

Price realism is not ordinarily a consideration in fixed-price contracts, since the risk of performing the contract at the proposed price is borne by the contractor. However, an agency may decide to use price realism in the competition for a fixed-price contract to assess the risk of poor performance in an offeror's approach or to measure an offeror's understanding of the solicitation's technical requirements. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. The nature and extent of an agency's price realism analysis are matters within the agency's discretion, and our review of an agency's price realism evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 4.

Here, offerors proposed fixed unit prices for eight tasks, and, as noted above, the solicitation stated that the agency would evaluate proposed prices for realism, in particular, to ensure that prices are not so low as to indicate a lack of understanding of the work to be performed. Having reviewed the record, we see no basis to find the Air Force's price analysis legally objectionable. Each offeror submitted detailed information about its pricing, and the contracting officer compared the total prices to each other, as well as the estimated total labor hours and the technical approach for performing the work. Agency Report, Tab 2(g), Price Competition Memorandum, at 3-4. The contracting officer noted that AST and Water Quality both have first-hand knowledge of the work, and yet proposed significantly different prices, with AST's prices substantially higher. Id. The contracting officer noted in particular that the offerors assumed a similar number of labor hours to perform the work. Id. at 4. On this record, we see nothing objectionable in the agency's ultimate conclusion that Water Quality's prices were not so low as to indicate a lack of understanding of the work, and that they were realistic.

AST nonetheless contends that the three lower-priced proposals (including that of Water Quality) were unrealistically low because they failed to account for the proper amount of water-disposal required under the solicitation. In AST's view, the lower-priced proposals were premised on an underestimate of the amount of liquid required to be disposed of under the contract, so that the firms underpriced their offers. The only way an offeror could have learned of the proper amount, AST alleges, was to have attended the site visit. That site visit "revealed information necessary to prepare a realistic bid proposal." Protester's Comments at 2.

AST's argument is untimely. The essence of AST's contention is that a site visit was critical to its competitors' submitting proposals with prices that reflect what AST views as the actual amount of liquid required to be disposed under the contract. This is essentially a challenge to the terms of the solicitation, which did not make attendance at the site visit mandatory. Alternatively, AST's presumably believes that the RFP should have identified the amount of liquid the contractor would be required to dispose of, or, at the least, it should have required offerors to disclose the amount of liquid whose removal their proposed prices reflect (which AST itself appears not to have disclosed in its proposal). Protests challenging alleged defects in a solicitation must be filed prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2002). As the incumbent, AST was uniquely knowledgeable of any such defect here and thus in a position to protest without waiting to learn that it had lost the competition. See Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465 at 5-6. Because it did not protest the alleged solicitation defects prior to the closing date, its protest is untimely.

In the protester's response to the agency report, the protester alleges the Air Force also revealed at the site visit that the liquid from the basins had to be hauled off base. The past practice had apparently been to treat the liquid at the site and drain off the wastewater there. "Based upon that representation from the Air Force representative [that the contract required water from the basins to be hauled off the base], AST increased its bid significantly to cover this requirement." Protester's Comments at 2. Despite two previous submissions laying out the effects of the site visit, it was in its comments, for the first time, that AST mentions this new information, which was allegedly not ascertainable from the SOW, and learned only at the site visit. This allegation appears to be inconsistent with the minutes of the site visit (which refers to the wastewater from the basins being drained off). Agency Report, Tab 2(f), Site Visit Minutes, at 3. To the extent that AST is contending that an Air Force representative at the site visit disclosed a performance requirement not set out in the RFP, AST was aware of an alleged ambiguity in the RFP that it was required to protest before proposals were due, so that any protest would now be untimely; in addition, reliance on the alleged oral advice not reflected in the RFP (or the site visit minutes) would have been unreasonable. Diamond Aircraft Indus., Inc., B-289309, Feb. 4, 2002, 2002 CPD ¶ 35 at 2.

Even if the protest were timely, nothing in AST's argument would cause us to conclude that the agency's price analysis was deficient. First, the agency denies that the site visit contained essential information, beyond what was contained in the RFP itself, necessary to prepare a proposal, and AST has not presented any evidence to support its assertion to the contrary. The RFP informed offerors of the amount of liquid the basins could hold, and the size of the basins found in the statement of work is the same as what was revealed during the site visit. Second, AST has not explained why Water Quality is incorrect in its assertion that its work as an incumbent subcontractor provided it familiarity with the work to be performed, so that attendance at the site visit was not necessary. Third, AST's assertion that the amount of liquid to be disposed of is a key variable in a firm's pricing is undercut by

the fact that, in setting out the components of the pricing structure in its own proposal, AST (unlike Water Quality) does not appear to have disclosed the amount of liquid the firm estimated must be removed.

The protest is denied.

Anthony H. Gamboa
General Counsel