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Decision

Matter of: Islandwide Landscaping, Inc.

File: B-293018

Date: December 24, 2003

Timothy H. Power, Esq., for the protester.

Maj. Gregg A. Engler, Department of the Army, for the agency.

Peter Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly determined that protester's proposed fixed price was unrealistically low is denied where solicitation called for price realism analysis and protester's price was substantially lower than other offerors' prices; based on comparison with these prices, it was reasonable for agency to conclude that protester's proposal posed a significant risk of nonperformance.

DECISION

Islandwide Landscaping, Inc. (ILI) protests the Department of the Army's award of a contract to Paradise Landscape Maintenance, Inc. under request for proposals (RFP) No. DAPC50-02-R-0037, for tree maintenance and removal services at Aliamanu Military Reservation, Hawaii. ILI contends that the Army improperly evaluated its offered price.

We deny the protest.

The RFP, as amended, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a 1-year base period, and an option to extend services for up to 12 months, for various tree-related services, including tree trimming, tree maintenance, tree survey, tree tagging, root removal, stump removal, and debris removal. The RFP informed offerors that the evaluation would be based on three factors: technical capability, performance risk (comprised of past performance and work experience), and price. Technical capability and performance risk combined were approximately equal in weight to price. The RFP stated that price would be analyzed to determine the extent to which it was "reasonable, realistic, and consistent with the proposal," and that unrealistically high or low prices may be grounds for eliminating a proposal. RFP at 59. Award was to

be made to the offeror whose proposal was found to be most advantageous to the government, price and other factors considered.

Five proposals were received, including ILI's and Paradise's. ILI's initial price was significantly lower than the four others' prices—it was less than 50 percent of the closest competitor's price—but the agency nonetheless included ILI's proposal in the competitive range along with those of Paradise and two other offerors. The agency conducted discussions, and invited offerors to submit revised proposals. Although the agency brought its concern regarding ILI's low price to the firm's attention, ILI did not submit a revised proposal. The agency conducted a second round of discussions, and again brought its concern regarding ILI's low price to ILI's attention. This time, the protester responded by raising its price, although it remained substantially lower than all other prices submitted; the price proposed by Paradise was the second lowest. In a price/technical tradeoff comparing ILI's and Paradise's proposals, the agency decided, in light of Paradise's technical superiority and ILI's unrealistic pricing, which the agency believed posed a risk of nonperformance, to make award to Paradise, notwithstanding ILI's lower price.

ILI filed a protest challenging the agency's technical and price evaluations. We summarily dismissed the protest ground relating to the technical evaluation because it failed to state a sufficient basis for protest. We therefore address here only the protester's assertion that the agency improperly determined that its proposal was unrealistically priced. ILI states that it is performing similar work at the prices it lists in its offer, and that its pricing therefore was realistic.

Where, as here, an RFP contemplates the award of a fixed-price contract, an agency may provide for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. 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. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Among the price analysis techniques that may be used is comparison with other prices received under the solicitation, Federal Acquisition Regulation (FAR) § 15.404-1(b)(2), and we believe that such a comparison can be appropriate in a price realism analysis.

We find nothing improper in the agency's analysis or conclusion here. The agency evaluated ILI's price for realism, in accordance with the terms of the RFP. This evaluation was based on a comparison of ILI's price with other prices received in response to the RFP—one of the acceptable price analysis techniques under the FAR—which showed that ILI's final price was only 69 percent of the next lowest price

received.¹ Based on this comparison, as discussed, the agency determined that ILI's price was so much lower than the other prices received that ILI's proposal posed a risk of unsuccessful performance. ILI disagrees with the agency's conclusion, but has not shown that the agency deviated from the terms of the RFP, that its price was not substantially lower than the other prices, or that the agency's conclusion was otherwise unreasonable. While ILI asserts that it is performing similar work elsewhere at prices similar to its prices here, it has provided no evidence supporting this assertion. Moreover, even if ILI had provided such evidence, there would be no basis for us to find it unreasonable for the agency to nonetheless conclude that ILI's low pricing presented a heightened risk of nonperformance.

Based on references by the contracting officer to unbalancing in the evaluation record, see Agency Report, Price Negotiation Memorandum, Tab 25, at 6, ILI argues that the Army improperly rejected its proposal based on unbalanced pricing. However, the contracting officer explains that his use of the term "unbalanced" was a mistake; he only intended to state that ILI's pricing was unrealistically low. We find that the record supports this interpretation. Unbalanced pricing exists where the price of one or more contract line items is significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). Ken Leahy Constr., Inc., B-290186, June 10, 2002, 2002 CPD ¶ 93 at 2; see FAR § 15.404-1(g)(1). Here, rather than a concern that some prices were too high, the contracting officer was only concerned that the prices were unrealistically low. Thus, the contracting officer wrote in the Price Negotiation Memorandum that "[ILI's] price is unreasonably low, 45% to 95% lower in comparison to other offers received, indicating an unbalanced or skewed pricing structure, and casts doubt on their ability to adequately perform at these questionable prices." Agency Report, Price Negotiation Memorandum, Tab 25, at 7. It is clear from this quotation that the contracting officer was concerned with unrealistically low pricing and not the overstated pricing that may be indicative of unbalanced pricing.

¹ ILI argues that the agency improperly calculated the percentage difference between ILI's price and the awardee's price, and consequently misevaluated the proposals. In this regard, ILI's price was 31 percent lower than the awardee's price, thus making the awardee's price 45 percent higher than ILI's. While the agency initially correctly stated that the awardee's price was 45 percent higher than ILI's, the contracting officer subsequently erroneously stated that ILI's price was "45% to 95% lower in comparison to other offers received." We find no basis to conclude that the contracting officer misevaluated proposals. While the contracting officer may have, on occasion, expressed the difference between the proposals incorrectly, nevertheless, it is clear that—as indicated by the fact that he otherwise correctly expressed the mathematical relationship between the prices—he in fact understood the very significant price difference between the proposals.

Finally, ILI argues that the Army failed to follow its source selection plan in making the award decision. However, source selection plans provide internal agency guidelines and, as such, do not give parties any rights. Centech Group, Inc., B-278904.4, Apr. 13, 1998, 98-1 CPD ¶ 149 at 7 n.4. It is the evaluation scheme in the RFP, not internal agency documents such as source selection plans, to which an agency is required to adhere in evaluating proposals and in making the source selection. All Star-Cabaco Enter., Joint Venture, B-290133, B-290133.2, June 25, 2002, 2002 CPD ¶ 127 at 4 n.1.

The protest is denied.

Anthony H. Gamboa
General Counsel