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Decision

Matter of: R&G Food Service, Inc., d/b/a Port-A-Pit Catering

File: B-296435.4; B-296435.9

Date: September 15, 2005

John Lukjanowicz, Esq., and B. Michael Schestopol, Esq., Oles Morrison Rinker & Baker LLP, for the protester.

Byron W. Waters, Esq., Department of Agriculture, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency unreasonably determined that the protester's prices were not fair and reasonable where the agency's price evaluation considered only offerors' unit prices and, in so doing, failed to provide a reasonable basis for comparing the relative costs to the government of offerors' competing proposals.

DECISION

R&G Food Service, Inc., d/b/a Port-A-Pit Catering (Port-A-Pit) protests its nonselection for contract award under request for proposals (RFP) No. 49-05-07, issued by the National Interagency Fire Center, Forest Service, Department of Agriculture, for mobile food services in various locations; for certain locations, the Forest Service awarded contracts to offerors other than Port-A-Pit and, for other locations, elected not to make contract award. Port-A-Pit argues that the agency's evaluation of proposals, including the evaluation of its price proposal, was improper.

We sustain the protest.

BACKGROUND

The RFP, issued on February 9, 2005, contemplated multiple awards of fixed-price requirements contracts for a base year and four 1-year options. The successful contractors under the RFP would be required to provide hot and cold meals and various supplemental items at 27 field locations (referred to as designated dispatch points, or DDPs) during wildland fires and other types of activities throughout the contiguous western United States and Alaska by means of mobile food service units

(MFSU). The RFP permitted offerors to propose for multiple DDPs, but contemplated the award of one contract for each location.

The solicitation required offerors to submit unit prices for meal services (e.g., breakfast, sack lunch, dinner), MFSU mileage, and handwashing units, which would form the basis of a requirements-type contract, as well as unit prices for additional refrigeration storage space, additional tents and seating, and supplemental food and beverage items, which would form the basis of a blanket purchase agreement (BPA). RFP § B, at 1-4.

In addition to price, the solicitation identified the following technical evaluation factors, in descending order of importance: proposed equipment; past performance; experience; and technical approach. The RFP informed offerors that the technical factors, when combined, were approximately equal in importance to price. Contract awards were to be made to the offerors submitting the proposals determined to meet the minimum requirements of the solicitation and to be the most advantageous (i.e., “best value”) to the government. The RFP also stated that the Forest Service might reject any or all offers and not award all DDP locations if doing so were determined to be in the government’s best interest. RFP § M.2, at 105.

The RFP contained detailed instructions for the preparation of proposals, and required that the offerors’ proposals consist of two parts—a technical proposal and a business/price proposal. Offerors were instructed that the technical proposals would be used to determine, among other things, whether the proposals met the requirements of the RFP. The solicitation also established minimum equipment requirements for an MFSU, and required offerors to complete an equipment requirements checklist for each unit offered. RFP § C.3, at 21-27, exh. M.2, at 112-18. The RFP stated that the equipment requirements would be evaluated on a pass/fail basis, and that “any unit that fails to meet any of these minimum requirements will be unacceptable and may not be considered any further.” Id. at 112. With regard to an offeror’s proposed price, the solicitation stated that the offeror’s business/price proposal would be evaluated to determine the reasonableness of the offeror’s price for the effort proposed. Id. § M.3, at 108. The solicitation also stated that, for purposes of contract award, only an offeror’s pricing for meals, mileage, and handwashing units under the requirements contract would be considered.¹ Id.

Twenty-five offerors, including Port-A-Pit, submitted proposals by the March 11 closing date. Port-A-Pit offered three MFSUs for 10 DDP locations. An agency technical evaluation board (TEB) evaluated offerors’ technical proposals using an

¹ If an offeror received the award of a requirements contract, the offeror’s prices for the additional optional items would then be evaluated, and a BPA awarded to the same offeror if the optional item prices were also determined to be reasonable. Id. § M.3, at 108.

adjectival rating system: exceptional, acceptable, marginal, or unacceptable for those technical factors other than past performance; and exceptional, acceptable, neutral, marginal, or unacceptable for past performance.² The TEB completed its evaluation of offerors' technical proposals on June 2. The overall ratings for the MFSUs proposed by Port-A-Pit were: Acceptable (+) for Unit 01; Exceptional (-) for Unit 02; and Acceptable (+) for Unit 03. Agency Report (AR), Tab 14, TEB Consensus Report, at 2.

The TEB subsequently considered the offerors' proposed prices and technical ratings, and made award recommendations for each DDP. *Id.*, Tab 15, TEB Best Value Analysis Report. In certain instances the TEB recommended that no contract award be made because of the lack of proposals that were considered technically acceptable with fair and reasonable prices. The contracting officer concurred with the TEB's recommendations, decided not to conduct discussions with the offerors, and forwarded the award recommendations and associated materials to the agency's source selection authority for review and approval. *Id.*, Tab 16, Source Selection Decision; Contracting Officer's Statement, July 18, 2005, at 6-7. The source selection authority accepted the findings and recommendations of the TEB and made contract award to 12 offerors for 21 DDPs. AR, Tab 16, Source Selection Decision.

Port-A-Pit received no awards because of the agency's determination that the firm's prices were not fair and reasonable, thereby making Port-A-Pit ineligible for award.³ This protest followed. The agency proceeded with award and authorized the contractors to begin performance notwithstanding the protests, based on a written determination that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for the decision of our Office. See 31 U.S.C. § 3553(d) (2000).

DISCUSSION

Port-A-Pit's protest primarily focuses upon the agency's evaluation of the firm's prices. The protester argues that the agency's determination that its prices were not fair and reasonable was improperly based upon only one component of its proposed price (*i.e.*, its mileage price). Port-A-Pit argues that given the relative proportions of the items likely to be required under the contracts (meals, mileage, handwashing units), an offeror with a higher mileage price could nevertheless represent a lower

² The TEB rated each offeror's MFSUs separately. The TEB also employed the use of "+" and "-" (*e.g.*, "acceptable plus") in its rating system. AR, Tab 21, TEB Consensus Report, at 2-3.

³ This included four of the six DDPs where the TEB recommended that no award be made (*i.e.*, DDPs #7, 8, 16, and 25). AR, Tab 15, TEB Best Value Analysis Report, at 10, 12, 25, 42.

overall cost to the government. The protester also contends that the Forest Service's price evaluation was irrational because it only considered offerors' unit prices. We agree.

Where a protester challenges an agency's evaluation of proposals, including the evaluation of an offeror's proposed cost or price, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Liquidity Servs., Inc., B-294053, Aug. 18, 2004, 2005 CPD ¶ 130 at 5; SAMS El Segundo, LLC, B-291620.3, Feb. 25, 2003, 2003 CPD ¶ 48 at 8. When an agency evaluates proposals for the award of a fixed-price contract, in which the government's liability is fixed and the contractor bears the risk and responsibility for the actual costs of performance, the analysis of an offeror's price need only determine that the price offered is fair and reasonable to the government (i.e., price reasonableness), and focuses primarily on whether the offered price is higher--as opposed to lower--than warranted.⁴ FAR §§ 15.402(a), 15.404-1(a); see Dismas Charities, Inc., B-289575.2, B-289575.3, Feb. 20, 2004, 2004 CPD ¶ 66 at 4; SAMS El Segundo, LLC, supra.

Agencies must consider cost to the government in evaluating proposals, 41 U.S.C. § 253a(b)(1)(A), (c)(1)(B) (2000), and while it is up to the agency to decide upon some appropriate and reasonable method for the evaluation of offerors' prices, an agency may not use an evaluation method that produces a misleading result. See Bristol-Myers Squibb Co., B-294944.2, Jan. 18, 2005, 2005 CPD ¶ 16 at 4; AirTrak Travel et al., B-292101 et al., June 30, 2003, 2003 CPD ¶ 117 at 22. The method chosen must also include some reasonable basis for evaluating or comparing the relative costs of proposals, so as to establish whether one offeror's proposal would be more or less costly than another's. Id.; see FAR § 15.405(b) ("the contracting officer's primary concern is the overall price the government will actually pay"). For example, in Health Servs. Int'l, Inc.; Apex Envtl., Inc., B-247433, B-247433.2, June 5, 1992, 92-1 CPD ¶ 493, the solicitation contemplated the award of a fixed-price, indefinite-quantity contract and offerors' proposals were required to include hourly rates for six categories of labor. We sustained a protest challenging the agency's price evaluation because it was based solely upon offerors' average hourly labor rates, without consideration of the estimated quantities of each labor category the

⁴ By contrast, when an agency evaluates proposals for the award of a cost-reimbursement contract, in which the government bears the risk and responsibility to pay the contractor its actual allowable costs regardless of the costs proposed by the offeror, see FAR § 16.301-1, the agency's analysis must also determine the realism of the offeror's proposed costs and what the costs are likely to be under the offeror's technical approach, assuming reasonable economy and efficiency (i.e., cost realism). See Pueblo Envtl. Solution, LLC, B-291487, B-291487.2, Dec. 16, 2002, 2003 CPD ¶ 14 at 13; PADCO, Inc.-Costs, B-289096.3, May 3, 2002, 2002 CPD ¶ 135 at 5.

agency expected to order, and thereby failed to establish whether one offeror's proposal was in fact more or less costly than another's.

Based on our review of the record here, we conclude that the Forest Service's price evaluation, including the determination that Port-A-Pit's prices were not fair and reasonable, was fundamentally flawed because it did not reflect the actual cost to the government of the offerors' competing proposals.

As set forth above, the solicitation required offerors to submit unit prices for meals, mileage, and handwashing units, which were the prices upon which the agency's contract award determination would be made.⁵ Port-A-Pit's unit prices, in comparison to the agency's government estimates⁶ and offerors' average prices, were as follows:

	Meals	Mileage	Handwashing Unit
Port-A-Pit	\$(DELETED) ⁷	\$(DELETED)	\$(DELETED)
Gov't Estimates	\$47.21	\$12.78	\$65.00
Average ⁸	\$44.24	\$20.00	\$73.82

AR, Tab 13, Abstract of Offerors' Prices by DDP, at 8; Tab 15, TEB Best Value Analysis Report, at 1.

In performing the evaluation of offerors' prices, the contracting officer did not utilize any quantity estimates for the meals, mileage, and handwashing unit items, but

⁵ For evaluation purposes, meal prices were based upon a per-person per-day (*i.e.*, breakfast, lunch, and dinner combined) rate; MFSU mileage was based upon a per-mile traveled rate; and handwashing units were based upon a per-sink per-day rate.

⁶ The government estimates were based upon historical price competition, using MFSUs under contract with the Forest Service during a prior fire season. AR, Tab 15, TEB Best Value Analysis Report, at 1.

⁷ While Port-A-Pit's meal price was \$(DELETED) per-person per-day in most instances, the offeror's meal price for its Unit 03 (all DDPs), as well as Units 01 and 02 (for the California-based DDPs), totaled \$(DELETED). AR, Tab 13, Abstract of Offerors' Prices by DDP.

⁸ The TEB determined that the average mileage price proposed under the solicitation was \$20 per mile. The agency did not compute an overall average price for meals and handwashing units, but did so for each DDP. The average meal and handwashing unit prices set forth above are for DDP 23 (Salt Lake City, Utah), one of the locations upon which Port-A-Pit proposed. AR, Tab 13, Abstract of Offerors' Prices, at 8.

instead limited her evaluation to offerors' unit prices. The contracting officer determined that while Port-A-Pit's unit prices for meals and handwashing units were not objectionable, its unit price for mileage was not fair and reasonable, in comparison to both the government estimate and the average price of other offerors.⁹ AR, Tab 15, TEB Best Value Analysis Report, at 1, 4-5. Based on the contracting officer's determination that Port-A-Pit's price for mileage was not fair and reasonable, the Forest Service found Port-A-Pit ineligible for contract award. Id. at 6; Contracting Officer's Statement, July 18, 2005, at 11 ("I made the determination based on price analysis that [Port-A-Pit's] mileage price was not fair and reasonable and could not form the basis for award").

The record reflects that mileage is by no means the largest component of cost to the government. Rather, the parties agree that meals are the primary cost for the services to be provided under the contract.¹⁰ Protest, June 21, 2005, at 8, exh. 1; AR, Tab 15, TEB Best Value Analysis Report, at 1. For example, the record indicates that under a predecessor contract, Port-A-Pit provided a total of [DELETED] meals and drove a total of [DELETED] miles in response to a fire in Ash, Arizona.¹¹ Protest, June 21, 2005, exh. 1, at 1. Using the unit prices proposed by Port-A-Pit here, meal costs would have been approximately \$39,644, while mileage costs, in comparison, would have been approximately \$17,100.¹² Similarly, the record indicates that with regard to a fire in Jimtown, Montana, meal costs to the government would have been approximately \$69,285 while mileage costs would have been approximately \$35,600.¹³ In light of the substantial difference in the relative costs for meals and mileage, the

⁹ The contracting officer also considered the mileage price that the agency had negotiated with Port-A-Pit on an earlier occasion in her determination here. AR, Tab 15, TEB Best Value Analysis Report, at 5.

¹⁰ The agency determined the relative significance of offerors' mileage costs by examining the total number of miles incurred and billed to the Forest Service by a selected MFSU during a prior fire season. AR, Tab 15, TEB Best Value Analysis Report, at 1. The parties agree that the cost for handwashing units was not significant to the overall cost to the government.

¹¹ While the record demonstrates the actual number of meals and amount of mileage provided here, it does not also indicate reflect the contractor's actual rates and thus, the government's actual costs.

¹² [DELETED] total meals / 3 = [DELETED] meals per person per day. [DELETED] x \$[DELETED] per person per day = \$39,644. [DELETED] total miles x \$[DELETED] per mile = \$17,100.

¹³ [DELETED] total meals / 3 = [DELETED] meals per person per day. [DELETED] x \$[DELETED] per person per day = \$69,285.04. [DELETED] total miles x \$[DELETED] per mile = \$35,600.

agency's price evaluation, to the extent that it considered only offerors' unit prices, failed to reflect the likely actual cost to the government of the offerors' approaches.

The record shows that the agency itself was aware of the shortcomings in its price evaluation methodology. Specifically, when making its source selection decision for DDP No. 23 (Salt Lake City, Utah), the TEB stated, "It is difficult to predict if [Port-A-Pit's] lower meal and sink prices outweigh [the awardee's] lower mileage price due to the uncertainty of the amount of services that will be required." AR, Tab 15, TEB Best Value Analysis Report, at 37. Notwithstanding the fact that the Forest Service had not determined whether Port-A-Pit's proposal would in fact be more costly than other offerors', the agency found the protester's prices were not fair and reasonable. In light of the fact that the Forest Service's price evaluation was not meaningful--because, as explained above, there is no necessary relationship between an offeror's unit prices and the likely actual cost of the contract to the government--we find the rejection of Port-A-Pit's price proposal to be unreasonable.

We recognize that the evaluation of price in the award of an indefinite-quantity contract can be challenging. Nonetheless, in our view, the way in which the agency evaluated prices here (*i.e.*, examining only unit prices without also considering the estimated quantities of each item) does not satisfy the legal requirement to consider cost to the government. Moreover, there appears to be no reason why the Forest Service could not develop estimates for each of the delivery items to be considered in the contract award determinations. The record reflects that the Forest Service possesses historical data on both the meals and mileage billed to the agency under prior contracts for these items. AR, Tab 16, Source Selection Decision, at 5. In fact, as set forth above, the agency determined the relative significance of offerors' mileage costs by examining the total number of miles incurred and billed to the Forest Service by a selected MFSU during a prior fire season. We see no reason why the agency could not also develop and apply in the price evaluation realistic estimates for the meals and handwashing unit quantities expected. Without using such estimates, the Forest Service's evaluation here failed to account for the difference in the relative proportions of the cost for meals and mileage in the total cost to the government, and, as a result, there was no direct relationship between the evaluated prices of a particular offeror and the actual price of performance by that offeror. See Health Servs. Int'l, Inc.; Apex Env'tl., Inc., *supra*, at 3.

Port-A-Pit also challenges the agency's evaluation of other offerors' proposals. The protester contends that the technical proposals submitted by two other offerors (*i.e.*, [DELETED] and [DELETED]) failed to meet the minimum equipment requirements of the solicitation.¹⁴ The agency specifically addressed and refuted these contentions

¹⁴ Port-A-Pit also protested that the proposal submitted by [DELETED] was not signed and did not acknowledge the amendments to the RFP; the protester subsequently withdrew this issue. Comments, Sept. 6, 2005, at 3 n.1.

in its report, explaining that the proposals submitted by both [DELETED] were properly determined to have met all minimum equipment requirements. In its comments, Port-A-Pit expresses disagreement with the agency report but makes no substantive rebuttal to the agency's position. Comments, Sept. 6, 2005, at 3. Our review of the record provides no basis to find the agency's evaluation here unreasonable or otherwise objectionable.

RECOMMENDATION

We conclude that the Forest Service's price evaluation, including the determination that Port-A-Pit's prices were not fair and reasonable, was improper because it did not provide a meaningful basis to consider offerors' proposed costs to the government. We recommend that the agency reevaluate offerors' prices and make a new source selection decision for all DDP locations for which Port-A-Pit submitted a proposal, employing a price evaluation method that allows comparison of the relative cost to the government of the offerors' competing proposals. We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2005). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel