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Decision

Matter of: PM Services Company

File: B-310762

Date: February 4, 2008

Leigh T. Hansson, Esq., Gregory S. Jacobs, Esq., and Stephen D. Tibbets, Esq., Reed Smith LLP, for the protester.

Lawrence M. Prosen, Esq., and Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd LLP, for Four Seasons Environmental, Inc., an intervenor.

Scott C. Briles, Esq., and Julie Ann Sammons, Esq., Department of Health and Human Services, Centers for Disease Control and Prevention, for the agency.

Scott H. Riback, Esq., and John M. Melody Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's technical proposal, as well as protester's and awardee's cost proposals, is denied where record shows that none of the alleged errors could have resulted in prejudice to the protester.

DECISION

PM Services Company protests the award of a contract to Four Seasons Environmental, Inc. under request for proposals (RFP) No. 2005-N-1708, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), to acquire comprehensive operation and maintenance of the agency's facilities at various locations. PM asserts that the agency misevaluated its technical proposal, and both PM's and the awardee's cost proposals.¹

We deny the protest.

¹ In its initial protest, PM asserted that the agency improperly failed to consider information in PM's revised proposal in the final evaluation, and also failed to provide meaningful discussions. The agency responded to these assertions in its report, and PM made no further mention of the issues in its comments on the report. Under these circumstances, we deem the issues to have been abandoned. Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7.

The RFP contemplated the award, on a “best value” basis, of a cost-plus-fixed-fee contract for operation and maintenance of CDC’s facilities, including scientific laboratories, offices, auditoriums, steam and chilled water plants, freezers, dining facilities, storage facilities, and research animal confinement facilities. The RFP advised that proposals would be evaluated on the basis of six technical factors: experience (worth up to 30 of 100 available points), program management plan (22 points), understanding of the problem (18 points), proposed staff and back-up personnel (16 points), technical approach (14 points), and past performance (not scored). RFP §§ M.1, M.2, and M.4. For cost evaluation purposes, the agency would conduct a cost realism evaluation to determine each offeror’s ability to project costs that are reasonable and whether the offeror understands the nature and extent of the work to be performed. RFP § M.6.

The agency received four proposals and, after an initial evaluation, included two--the protester’s and the awardee’s--in the competitive range. The agency then engaged in discussions with both firms and solicited final proposal revisions (FPR). In evaluating the FPRs, the agency assigned the protester’s proposal 85 points, and the awardee’s 98 points. PM’s final evaluated cost was \$71,351,906, while the awardee’s was \$68,122,022.65. On the basis of these evaluation results, the agency determined that, since Four Seasons’s proposal was technically superior and offered the lowest evaluated cost, it represented the best value. CDC thus made award to the firm. After receiving a debriefing, PM filed the instant protest.

PM challenges the agency’s technical evaluation under the understanding of the problem and proposed staff and back-up personnel evaluation factors. According to the protester, had the agency properly evaluated its proposal under these factors, its final total score would have been 8.9 points higher, for a total of 94.9 points.

Prejudice is an essential element of every viable protest and, where it is not demonstrated or otherwise evident, we will not sustain a protest allegation, even where the record shows that the agency’s actions were arguably improper. GC Servs. Ltd. P’ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 7-8; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996). PM was not prejudiced by the alleged evaluation improprieties. While PM asserts that its proposal should have received a total technical score of 94.9 points, it does not challenge Four Seasons’s proposal’s score of 98 points, or the agency’s substantive evaluation findings supporting its conclusion that Four Seasons’s proposal was technically superior. Under these circumstances, even if we agreed with PM regarding the agency’s evaluation of its proposal, there would be no basis for questioning the award, since Four Seasons’s proposal still would be technically superior to PM’s (or, at worst, technically equivalent), and lower cost. These assertions thus do not provide a basis for sustaining the protest.

PM asserts that the RFP requirement that offerors escalate their proposed Service Contract Act (SCA) labor rates for the option years was unfair because firms were free to propose virtually any escalation rate; consequently, the agency's cost evaluation did not compare proposed costs on an equal basis. According to the protester, the evaluation criteria in the RFP did not state that the agency would evaluate information relating to offerors' proposed escalation rates as part of its cost evaluation.

This aspect of PM's protest is untimely. Our Bid Protest Regulations require that protests relating to alleged improprieties in a solicitation that are apparent on its face be filed prior to the deadline for submitting proposals. 4 C.F.R. § 21.2 (a)(1) (2007). The RFP here instructed offerors as follows regarding the preparation of their cost proposals:

Labor escalation provisions for Years 2-5 shall include anticipated wage increases for proposed personnel and/or proposed categories of labor. It shall be the contractor's responsibility to formulate and justify their rationale for Year 2-5 labor escalation rates.

RFP § L.5 b (1)(a). Additionally, section M.6 provided: "Furthermore, cost/price will be evaluated on the basis of cost realism which is defined as the offeror's ability to project costs which are reasonable and indicate that the offeror understands the nature and extent of the work to be performed." Reading these provisions together, we find that it was clear from the RFP that offerors were free to propose and justify different escalation rates; it follows, that offerors' cost proposals could be evaluated based on different rates. Thus, to the extent PM thought this would result in an unfair evaluation, it was required to protest on this ground prior to the closing time for submission of initial proposals. 4 C.F.R. § 21.2(a)(1).

We note that this issue came up in the context of discussions with the protester as well. The protester was advised as follows: "[Your] Direct Labor presentation includes provision for cost escalation of administrative personnel only (Project Manager, Supervisors, administrative, etc.). Escalation must also be applied to all DOL-covered personnel [see L.5 b(1)(a)]." AR exh. E, at 4. Thus, to the extent the protester may have thought that the RFP as originally issued did not contemplate offerors providing--and the agency evaluating--proposed escalation for DOL-covered employees, it knew at the point it received this discussion question what the agency was expecting from the offerors, and what it intended to evaluate. It follows that, even if the protester were not required to protest on this ground prior to the deadline for submitting proposals, it was required to protest within 10 days of receiving the agency's discussion question quoted above. 4 C.F.R. §21.2 (a)(2). In view of the forgoing considerations, we conclude that this aspect of PM's protest is untimely.

In any case, as noted, PM's evaluated cost was \$71,351,906, while the awardee's was \$68,122,022.65, for a difference of \$3,229,883.35, or approximately 4.4 percent. The

record also shows that, in preparing its proposal, PM applied a [deleted] percent escalation rate for its SCA labor costs, AR exh. F, at 3, while Four Seasons applied a [deleted] percent escalation rate. Agency Supplemental Submission, Jan. 25, 2008, at 6. Given the approximately 4.4 percent difference between the firms' prices, the record shows that the slight variance between their escalation rates ([deleted] percent) could not have affected the relative standing of their cost proposals. Accordingly, PM was not prejudiced by the escalation provision. GC Servs. Ltd. P'ship, supra.

PM argues that Four Seasons failed to provide justification for its [deleted] percent escalation rate, and that the record does not include an independent finding by the agency that its rate was reasonable. PM notes, in this connection, that its proposal contained a detailed analysis of the Atlanta, Georgia labor market in support of its proposed rate, whereas the record shows that Four Seasons reduced its initially proposed escalation rate from [deleted] percent based solely on the .89 percent rate reflected in the last SCA wage rate determination (issued as an amendment to the RFP). PM concludes that, absent a detailed rationale for Four Seasons's revised proposed escalation rate, there was no reasonable basis for the agency to conclude that the rate was reasonable and realistic.

As PM notes, its proposal contained a detailed analysis of the Atlanta labor market for an 11-year period in support of its proposed [deleted] percent escalation rate. AR vol. III, Proposal Revision, Jan. 12, 2006, at (unnumbered) pages 38-40. This analysis was not specific to PM's technical approach but, rather, was based on the Atlanta labor market generally. While Four Seasons's proposal did not include a similarly detailed analysis, we see no reason why the agency could not consider PM's analysis in concluding that the virtually identical rate of [deleted] percent offered by Four Seasons was reasonable as well. Moreover, consistent with the requirements of Federal Acquisition Regulation § 15.404-1, relating to the conducting of cost analyses, the record shows that the Defense Contract Audit Agency performed a cost evaluation of PM's proposal, which included a review of its proposed [deleted] percent escalation rate with no exception taken. AR exh. F, DCAA Report, Oct. 23, 2006, at 2. We conclude that the agency had a sufficient basis to find that Four Seasons's rate was reasonable and realistic based on the information contained in the record.

The protest is denied.

Gary L. Kepplinger
General Counsel