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Decision

Matter of: Accumark, Inc.

File: B-310814

Date: February 13, 2008

Thomas O. Mason, Esq., and Francis E. Purcell, Jr., Esq., Williams Mullen, for the protester.

John Pope Midyette for InfraMap Corporation, an intervenor.

Dave Nimmich, Esq., Naval Facilities Engineering Command, 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

1. Protest that agency unreasonably found that awardee's prices were realistic under a fixed-price contract is denied where record shows agency based its determination on a comparison of all offerors' prices to one another and to the government estimate, and all prices received were within a narrow range.

2. Protest that agency should have rejected awardee's proposal for offering unbalanced prices is denied where awardee's price was low overall and, to extent that its prices for one element of contract were high in comparison to other offerors' prices and government estimate, record shows estimated quantity for that element was reasonably accurate; thus, based on the record, there is little risk that award will not result in lowest cost to government.

DECISION

Accumark, Inc. protests the award of a contract to InfraMap Corporation under request for proposals (RFP) No. N40085-05-R-2545, issued by the Department of the Navy to acquire utility and underground facilities locating and marking services at various Naval facilities in the Hampton Roads, Virginia area. Accumark asserts that the agency misevaluated the awardee's price proposal.

We deny the protest.

The RFP contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base period, with 4 option years and 5 award option years. Award was to be made on a "best value" basis, considering price and three

non-price evaluation factors--technical approach/management, corporate experience and past performance. RFP § M.2. The technical factors, combined, were equal in weight to price. The agency was to consider the reasonableness, realism and completeness of the proposed prices; proposals that offered unreasonable, unrealistic, or unbalanced prices could be downgraded or considered unacceptable. Id. In this regard, realism was defined as follows: "Prices are compatible with the scope of solicitation performance requirements and proposed technical approach." Id.

The agency received three proposals and included all in the competitive range. Following discussions with the offerors, the agency made award to Accumark. InfraMap challenged the award in an agency-level protest, alleging that the Navy improperly had failed to solicit final proposal revisions (FPR) at the conclusion of discussions. The agency determined that InfraMap was correct, and thereafter advised all three offerors that they would be permitted to submit FPRs. In soliciting FPRs, the agency disclosed all offerors' total prices in order to ameliorate any competitive harm to Accumark due to the release of its price in connection with the announcement of the award. Agency Report (AR), exhs. 17, 18.

InfraMap and Accumark (and the third offeror) submitted revised proposals; Accumark made limited changes to its technical proposal and also slightly revised its proposed prices, while InfraMap revised only its price. After evaluating the proposals, the agency rated the proposals as follows:

Offeror	Tech./Mgmt.	Corp. Exp.	Past Perf.	Overall Tech. Rating	Price
Accumark	Very Good	Satisfactory	Satisfactory	Satisfactory	\$15,088,000
InfraMap	Exceptional	Very Good	Very Good	Very Good	\$13,607,638
Offeror A	Satisfactory	Marginal	Neutral	Marginal	\$14,494,800

AR, exhs. 21, 27. On the basis of these evaluation results, the agency made award to InfraMap, concluding that, because the firm had submitted the best technical proposal at the lowest price, it offered the best value to the government. AR, exh. 22. After being advised of the award decision, Accumark filed this protest.

Accumark asserts that the agency unreasonably determined that InfraMap's proposed prices were realistic.¹ InfraMap reduced its price in its FPR and the

¹ In its initial protest, Accumark also asserted that the agency improperly had accepted an alternate price proposal from InfraMap that was noncompliant with the terms of the solicitation, and also engaged in unequal discussions. The agency responded to these assertions in its report, and in its comments, Accumark makes no mention of these assertions. We deem these allegations to be abandoned. Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7.

protester maintains that this was a dramatic price reduction that should have led the agency to conclude that there would be an adverse impact on InfraMap's technical capability to perform the contract.²

In the context of a solicitation that provides for award of a fixed-price contract, an agency may, in its discretion, provide for considering the realism of offered prices for purposes of assessing whether a price is so low as to evince a lack of technical understanding on the part of the offeror. Consolidated Servs., Inc., B-276111.4, Dec. 29, 1997, 98-1 CPD ¶ 14 at 4. In such a context, an agency's simple comparison of the prices received with one another, as well as with a government estimate, can serve as an adequate basis to establish the realism of the proposed prices where, as here, there was adequate competition, and the proposed prices fall within a narrow range. Id. at 5.

The realism determination here was unobjectionable. The record shows that InfraMap's initial price--\$[deleted]--was found by the agency to be unreasonably high, AR, exh. 27, at 5, and the agency so advised InfraMap during discussions. AR, exh. 8, at 1. InfraMap reduced its price in its FPR, and the agency compared this reduced price to the other prices received to determine whether it was realistic. The agency found that InfraMap's price compared favorably to the other prices.³ It thus concluded that, since there was adequate price competition, InfraMap's proposed price was realistic, reasonable and complete. AR, exh. 22, at 3, 5-8. The agency's methodology was consistent with the applicable standard, and its conclusion was reasonable in light of the fixed-price nature of the requirement, the comparability of the prices received and the adequacy of the competition. Under these circumstances, the protester's general assertion that InfraMap may not have understood the requirement is not sufficient to bring the agency's determination into question. In this regard, the agency rated InfraMap's proposal superior to the others received, and Accumark has raised no substantive challenge to the agency's evaluation conclusions. See Consolidated Servs., Inc., supra.

Accumark asserts that the award to InfraMap was improper because its proposed prices were unbalanced. In this connection, offerors were required to submit prices for six exhibit line items (ELINS) for each of the contract's performance periods. RFP § B.17; § J, exhs. A-K. Each of the ELINS represented a different aspect of the

² Accumark also argues that the agency failed to consider the reasonableness of InfraMap's price. However, price reasonableness concerns whether a price is too high, not whether it is too low. Medical Matrix, LP, B-299526, B-299526.2, June 12, 2007, 2007 CPD ¶ 123 at 9 n.6. Since Accumark claims that the awardee's price is too low, there is no basis to find that price unreasonable.

³ The record shows that the agency also used the government estimate--\$18,394,585.90-- as a reference point in its price evaluation, AR, exh. 27.

required work. Accumark maintains that InfraMap's prices for the first five ELINS are understated, and that its price for the sixth is overstated. According to the protester, there was no historical information available for the sixth ELIN, and the agency thus did not have a reasonable basis for its quantity estimate under that ELIN; as a result, there is a risk that InfraMap's low total price will not result in the lowest actual cost to the government.

As an initial matter, we note that, to the extent that the protester is challenging the accuracy of the agency's estimated quantity for the sixth ELIN, its protest is untimely. Our Bid Protest Regulations require that protests concerning alleged improprieties apparent on the face of a solicitation be filed prior to the deadline for submitting proposals. 4 C.F.R. § 21.2(a)(1) (2007). Here, the RFP included the agency's estimated quantities for all of the ELINS, and if Accumark thought that the estimated quantities were inaccurate, it was required to protest the matter prior to the deadline for submitting proposals.

In any case, this argument is without merit. Under Federal Acquisition Regulation (FAR) § 15.404-1(g), unbalancing exists where, despite a proposal's low overall price, individual line item prices are either understated or overstated. In such circumstances, agencies are required to consider whether award to a firm whose prices are unbalanced may pose a risk that the government will pay unreasonably high prices for contract performance. *Id.* In the context of an ID/IQ contract, a key consideration is the accuracy of the government's quantity estimates; if the estimates are reasonably accurate, then evidence of mathematical unbalancing generally does not present a risk that the government will pay unreasonably high prices for contract performance. Neals Janitorial Serv., B-279633, June 3, 1998, 98-1 CPD ¶ 156.

The sixth ELIN is for global positioning system (GPS) mapping services, and the RFP specified an estimated 800 units for these services. The individual responsible for preparing the estimate states that, while no historical data existed for this aspect of the contract, he based his estimate on the potential number of parcels for which the agency might require that GPS survey work be performed. Specifically, he states:

For the line item involving GPS mapping, this service had not been part of the previous contract, so I did not have historical data from that contract to assist me in creating the estimated quantity. Instead, I had been informed that the primary Navy customer for these services would be a communications command that was planning to earmark funds to map portions of its underground communications lines that had not previously been mapped using GIS [geographic information system] technology. My estimated quantity of 800 such units was based upon the number of parcels required to complete that effort.

AR, exh. 26. The agency further explains that the GPS mapping line item reflects an estimate of the level of effort required if the Navy telecommunications command

orders mapping for the entirety of its unmapped network in the Hampton Roads area, and that it therefore would be virtually impossible to overrun the estimated quantity.

The protester challenges the estimate on two bases. First, it asserts that the estimate is based on the needs of the primary user of the GPS mapping requirement, but does not account for other possible users of the service. However, Accumark has produced absolutely no information or evidence to show that other commands within the Navy may require GPS mapping services, and nothing in the record suggests that the agency contemplates allowing other commands to use the contract for these purposes. Accumark's mere speculation regarding other possible ordering activities is insufficient to reasonably draw into question the accuracy of the estimate. Second, the protester maintains that, because the number of underground lines to be mapped varies from one parcel to another, the actual cost of mapping any given parcel could vary depending on the amount of time necessary to map a given parcel. However, the RFP called for a lump-sum price per mapping survey. Thus, the number of lines to be mapped and the amount of time involved would have no effect on the estimated quantity or the cost to the government. We conclude that Accumark has failed to show that the estimate is inaccurate and there is no basis in the record to otherwise find that there is any risk that the agency will pay unreasonably high prices for the GPS survey requirement.

The protest is denied.

Gary L. Kepplinger
General Counsel