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Comptroller General
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Matter of: J&D Maintenance and Service

File: B-282249

Date: June 18, 1999

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Michael A. Gordon, Esq., and Fran Baskin, Esq., Holmes, Schwartz & Gordon, for S.D. Ashe Landscaping & Services, Inc., an intervenor.
Thomas Kathe, Esq., and Vicki O'Keefe, Esq., Naval Facilities Engineering Command, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee failed to adequately address various subfactors under a particular evaluation factor is denied where record demonstrates reasonable basis for agency ratings of highly satisfactory or acceptable under each subfactor.

2. Even if proposal is unbalanced, it need not be rejected where agency determined that lack of balance did not pose unacceptable risk to the government and any unbalancing was immaterial since there was no basis for concern that the offer might not ultimately be low.

DECISION

J&D Maintenance and Service protests the award of a contract to S.D. Ashe Landscaping & Services, Inc. under request for proposals (RFP) No. N68931-98-R-0059, issued by the Naval Facilities Engineering Command for grounds maintenance services at three Navy bases in Florida. The protester contends that the Navy unreasonably found Ashe's proposal to be acceptable.

We deny the protest.

BACKGROUND

The RFP sought proposals to furnish all supervision, engineering services, labor, transportation, supplies, equipment, and materials to provide grounds maintenance services at the Naval Air Station (NAS), Jacksonville; NAS, Cecil Field; and Naval Station, Mayport. The solicitation contemplated the award of a contract combining definite-quantity line items and indefinite quantity line items for a base year and up to four 1-year option periods. (The definite-quantity line items are referred to in the record as firm fixed-price (FFP) items and so, for the sake of consistency with the record, we use that acronym here, although the indefinite-quantity line items also had fixed unit prices.) The FFP line items, for which prices were requested on a monthly basis, covered scheduled services, while the indefinite-quantity items, for which estimated quantities were furnished, covered unscheduled services.

The RFP provided for award to the offeror whose proposal represented the best value to the government, with the cumulative weight of technical factors equal to that of price. RFP §§ M.3, M.4. Proposals were to be evaluated on the basis of four technical factors: methods and procedures, experience, past performance, and corporate resources and management. Under the methods and procedures factor, offerors were to address the following eight subfactors: full-time equivalency rationale; employee qualifications; tools, supplies and equipment; rationale--overhead personnel; indefinite quantity and FFP work plans; recurring work schedule; purchasing system; and quality control plan. To facilitate the agency's evaluation of the FFP portion of the proposals, offerors were required to complete a supplemental pricing form breaking down their direct and indirect costs and specifying their proposed full-time equivalents (FTE).

Ten firms submitted proposals prior to the August 24, 1998 closing date. After initial evaluation, the technical evaluation board (TEB) rated the proposals of both J&D (the incumbent contractor) and Ashe highly satisfactory, and included them in the competitive range along with two other proposals that had received ratings of acceptable. After conducting discussions with the four offerors and receiving revised proposals, the TEB lowered its rating of Ashe's proposal from highly satisfactory to acceptable,[1] [DELETED]. Memorandum from Chairman, TEB to Chairman, SEB, Nov. 16, 1998, at 1 and encl. 1, at 6. A second round of discussions was conducted, at the conclusion of which the technical ratings were not revised. Memorandum from Dec. 16, 1998, at 1. The TEB's final ranking of proposals, together with their prices, was as follows:

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[1]The TEB also raised the rating of another offeror, not relevant here, from acceptable to highly satisfactory.

Ranking	Offeror	Rating	Price
1	J&D	Highly Satisfactory	$19,469,042.80
2	Offeror C	Highly Satisfactory	[DELETED]
3	Ashe	Acceptable	$18,282,268.32
4	Offeror D	Acceptable	[DELETED]

Contracting Officer's Memorandum, Mar. 22, 1999, at 7. After reviewing the TEB's ratings, the source selection authority (SSA) determined, with the source selection board's (SSB) concurrence, that the downgrading of Ashe's overall technical rating from highly satisfactory to acceptable based on the TEB's understanding that Ashe [DELETED]unwarranted. Id. at 7-8. The SSA revised Ashe's overall rating to highly satisfactory and determined that the proposal was technically equivalent to J&D's. Id. at 8. The SSA further determined that Ashe's proposal, which was lower in price than J&D's, represented the best value to the government. On March 1, the contracting officer awarded a contract to Ashe.

ANALYSIS

J&D argues that Ashe's proposal should have been rejected as unacceptable because it failed to demonstrate Ashe's understanding of, and ability to perform, the work effort required.[2] In this regard, the protester maintains that the proposal failed to

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[2]The protester also argued in its initial protest that the agency had deviated from the evaluation scheme set forth in the RFP by selecting for award the lowest-priced, technically acceptable offer, rather than the offer representing the best value to the government; that the solicitation, by requesting supplemental pricing information for the fixed-price portion of the schedule only, had implied that these were the only prices that would be considered in the evaluation of price; and that the agency had not considered the value of the enhancements that it had offered in performing its best value analysis. The agency responded to these arguments in its report, pointing out that it had not selected for award the lowest-priced, technically acceptable offer (which had been submitted by offeror D, not Ashe). The agency further noted that both sections L and M of the solicitation had advised offerors that indefinite-quantity prices would be part of the evaluation, and that the evaluators had considered the value of the enhancements included in J&D's proposal, but had decided that they were not worth its higher price.

In commenting on the agency report, the protester has not attempted to rebut any of the agency's responses. Accordingly, we consider it to have abandoned these bases of protest. Arjay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3 at 1 n. 1.

address adequately six of the eight subfactors identified under the methods and procedures factor.[3]

The evaluation of technical proposals is primarily the responsibility of the contracting agency. Our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the record only to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Am-Pro Protective Agency, Inc.; MVM, Inc., B-271385.4 et al., Sept. 23, 1996, 96-2 CPD ¶ 192 at 3. Here, as set forth below, we see no basis to object to the agency's evaluation of Ashe's proposal under the evaluation subfactors in question.

First, the protester alleges that Ashe failed to furnish an adequate rationale for its FTE numbers by failing to explain how it had derived the numbers. In this regard, J&D maintains that the solicitation required offerors to support their FTE numbers with the information they used to arrive at those numbers. Protester's Comments, Apr. 24, 1999, at 4.

The RFP instructed offerors to "provide information to support the work effort of the proposed Full Time Equivalent (FTEs) . . . ." RFP § M.4(a)(1). We do not think that this language required offerors to explain how they had derived their FTE numbers; it simply required them to support (i.e., justify) their numbers. The agency evaluators found that Ashe's FTE total, although "slightly high," was justified because it [DELETED]; accordingly, they rated Ashe's proposal as acceptable under this subfactor. TEB Report, Oct. 22, 1998, encl 1 at 4 and encl. 2; Declaration of SSB Chairperson, Mar. 23, 1999, at 2. Since Ashe provided a reasonable explanation for why its FTE total exceeded the government estimate, the protester's argument that Ashe failed to furnish an adequate rationale for its FTE numbers is unpersuasive.

Second, J&D argues that Ashe failed to address adequately the employee qualifications subfactor by failing to identify the personnel that it was proposing to fill several significant positions. Specifically, the protester objects to Ashe's failure to identify in its proposal its quality control personnel, pest control personnel, arborist, and horticulturist.

The RFP required offerors to "describe the qualifications" of the employees or subcontractors who would be performing the work requirements. RFP § M.4(a)(2). Ashe responded by naming and describing the qualifications of its senior management personnel (i.e., its president, vice president, general manager, senior quality control manager, and two site managers). Ashe also stated that it would be hiring personnel to fill other positions, including those of horticulturist, arborist,

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[3]Ashe received ratings of acceptable under the FTE rationale, indefinite-quantity/FFP work plans, and quality control plan subfactors, and ratings of highly satisfactory under the other five subfactors.

quality control managers, and pest control applicators. Ashe described in detail the qualifications that it would require of such individuals. For example, it stated its intention to hire a horticulturist from the Florida area who was "specifically familiar with and educated in the growing conditions and the plants native to Florida's growing environment"; an arborist "from the area who is intimately familiar with the trees of the region"; quality control managers with 5 years of broad-based experience in grounds management; and pest control applicators certified by the state of Florida. Ashe's Proposal, Methods and Qualifications tab; Ashe's Response to Discussion Questions, Nov. 9, 1998, at 1-3. While Ashe did not identify specific individuals by name to fill these positions, there was no requirement in the RFP that it do so. Since Ashe described the qualifications it would require of the individuals hired to fill these positions and named the personnel currently in its employ who would be managing the contract, as well as describing their qualifications, we see no basis to find unreasonable the agency's evaluation of Ashe's proposal under this subfactor.

J&D argues next that Ashe failed to submit an adequately detailed workplan for the indefinite-quantity work. The RFP did not require offerors to submit detailed indefinite-quantity workplans; it required them to "describe" their plans for handling the indefinite-quantity orders. RFP § M.4(a)(5). Ashe responded by explaining that [DELETED]. Given that the solicitation requested only a description of the offeror's plan, we think that the evaluators could reasonably regard this overview as acceptable.

J&D further argues that the evaluators could not reasonably have found Ashe's sample schedule for the recurring work highly satisfactory since it did not cover all categories of recurring work to be performed. The RFP required offerors to "[d]evelop a single sample schedule of recurring work. . . ." RFP § M.4(a)(6). Ashe responded by furnishing a sample schedule for one category of work at one location (Maintenance Level I, NAS Jacksonville), together with an explanation of the process that it would follow to develop the remainder of the schedule if, and when, it were awarded the contract. Ashe's Proposal, Operations and Scheduling Tab. Given that the solicitation requested only a <u>single</u> sample schedule, we see no reason that the evaluators could not reasonably have viewed Ashe's submission of a sample schedule for one category of work as sufficient.

J&D also argues that Ashe's description of its purchasing system was inadequate. The solicitation required offerors to describe the purchasing system that they would use to deliver materials. RFP § M.4(a)(7). Ashe responded with a description of its purchase order tracking system and an explanation of its approach to acquiring supplies and materials, which emphasized bulk purchases. Ashe's Proposal, Operations and Scheduling Tab. In response to the agency's query as to where bulk items purchased in advance would be stored, Ashe noted that it had begun a search for suitable storage facilities by contacting two local commercial real estate brokers. Ashe's Response to Discussion Questions, Nov. 9, 1998, at 2nd unnumbered page.

The protester argues that this response should have been deemed inadequate because it failed to demonstrate that Ashe had inquired as to the availability or cost of suitable storage facilities. We see no reason that the evaluators could not have accepted Ashe's explanation that it was in the process of looking for suitable facilities as sufficient, however, particularly given the absence of any indication that the RFP required more.

Finally, in terms of its challenges to the technical evaluation, the protester contends that although the RFP required Ashe to submit a quality control plan for the proposed work, Ashe submitted only a quality control plan summary.

Contrary to the protester's assertion, the RFP did not require offerors to submit their quality control plans; it required them to "discuss" their quality control plans and "the methods used to inspect the services rendered including specific regard to authority and chain of command." RFP § M.4(a)(8). Ashe's summary of its quality control plan, furnished under the Operations and Scheduling tab of its proposal, states that the quality control manager will be a full-time employee and explains how Ashe's quality control guidelines will be applied. Ashe's summary also states, with regard to the issue of inspections, that inspections will be done on foot where practical; that they will be accomplished while the work is in progress; that follow-up inspections will be conducted in the event of a detected deficiency or where the work cannot be completely evaluated at the time of completion; that equipment will be inspected daily to assure quality and safety; and that personnel will be inspected daily to ensure that they are using proper safety equipment. Given the information in its proposal, we think the evaluators reasonably viewed Ashe's proposal as providing sufficient discussion of its quality control plan and inspection procedures.

Next, J&D argues that Ashe deviated from the terms of the solicitation by submitting an unbalanced offer, thereby gaining a competitive advantage over other offerors; as a consequence, the protester asserts, Ashe's proposal should have been rejected. The protester maintains, in this regard, that Ashe included a portion of the cost of performance of its indefinite-quantity work in its FFP line item prices.

As an initial matter, [DELETED].[4]

Even if this pricing is viewed as unbalanced, however, the agency was not required to reject the offer on that basis. The RFP did not state that a proposal containing

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[4]During discussions with Ashe, the agency pointed out that its pricing for the FFP items and the indefinite-quantity items appeared to be unbalanced; Ashe responded by explaining that "[DELETED]." Ashe's Response to Discussion Questions, Nov. 9, 1998, at 4th unnumbered page. Also, in response to the agency's second round of discussions, Ashe noted that [DELETED]. Letter from Ashe to the Contracting Officer (Dec. 1, 1998).

unbalanced prices between line items or subline items could be considered unacceptable, as the protester alleges; instead, it provided that a proposal containing materially unbalanced prices or prices whose lack of balance posed an unacceptable risk to the government could be considered unacceptable. RFP § L.3(f)(8). Cf. Federal Acquisition Regulation § 15.404-1(g)(3) (similar provision). Here, where the agency did not find that any lack of balance in Ashe's offer was material or created an unacceptable risk to the government, we will review that conclusion for reasonableness.

We see no basis to question the reasonableness of the agency's analysis here. We recognize that legitimate concern about the risk to the government may arise where an offer includes relatively high prices for FFP line items (where there can be a firm expectation that the items will be ordered) and relatively low prices for indefinite-quantity line items (where there may be doubt about the accuracy of the quantity estimates). One kind of risk that acceptance of such an offer may create--which could render the unbalancing material--is the risk that, if the solicitation's quantity estimates prove not to be accurate, the offer may ultimately not represent the low cost to the government. Here, however, the protester does not challenge the accuracy of the quantity estimates, and there is no basis otherwise to doubt their accuracy, so any risk to the government should be limited and any unbalancing thus appears immaterial. See International Terminal Operating Co., Inc., B-229591, B-229591.2, Mar. 18, 1988, 88-1 CPD ¶ 287 at 4.

Moreover, Ashe provided the government concrete explanations for its pricing [DELETED], so that the agency could reasonably determine that the pricing proposed was a business judgment on the part of the offeror that was not objectionable and did not pose an unacceptable risk to the government. Specifically, regarding the issue of whether Ashe's [DELETED], the SSB found that Ashe's [DELETED] did not present a risk that [DELETED] would not be performed, Agency Report at 10, a conclusion which the protester has not disputed and which we have no reason to question.[5] On this record, we have no basis to question the reasonableness of the agency's view that the pricing structure in Ashe's proposal did not present an unacceptable risk to the government.[6]

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[5]It is apparent from the foregoing that the protester's argument that the SSB failed to consider the impact on performance of Ashe's unbalanced pricing is without basis. It is also apparent that any failure by the price evaluation board to analyze Ashe's price for imbalance did not have a material impact on the source selection decision because the SSB clearly was aware of, and took into consideration, the apparent unbalancing in Ashe's prices in making their award recommendation.

[6]J&D cites our decision, Tri-State Gov't Servs., Inc., B-277315.2, Oct. 15, 1997, 97-2 CPD ¶ 143, as a basis for objecting to the pricing structure in Ashe's proposal. In Tri-State, we found improper a contract award to an offeror that had materially

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Finally, J&D complains that the price for the base year FFP work on Ashe's Supplemental Pricing Form differs from the price for the base year FFP work in its final price proposal. The protester asserts that due to the discrepancy, it is impossible to determine the actual cost to the government of the base year FFP work. The discrepancy in pricing to which the protester refers is attributable to the fact that Ashe revised the pricing in its proposal after discussions, but was not requested to, and did not, submit a revised Supplemental Pricing Form. We do not see that the discrepancy results in any confusion as to Ashe's price; in any event, it is clearly the price in its revised price proposal that controls.

The protest is denied.

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altered an RFP pricing schedule to its competitive advantage. Instead of submitting single unit prices for each line item as requested by the RFP, it split the estimated quantities listed on the price schedule for a number of items and submitted one price for a number that it designated the "first" quantities ordered and a different price for what it designated the "next" quantities ordered. Thus, it in effect created an extra line item for each of the affected line items. We found that the substitution of this modified price schedule for the one set forth in the RFP constituted a material deviation from the terms of the RFP. Tri-State is not controlling here, since there is no basis to conclude that Ashe's pricing constituted a material deviation from the terms of the RFP.