



United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Molina Engineering, Ltd./Tri-J Industries, Inc. Joint Venture

File: B-284895

Date: May 22, 2000

George Molina and Peter Stella for the protester.
Col. Nicholas P. Retson and Maj. Ralph J. Tremaglio, Department of the Army, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Exclusion of protester's proposal from competitive range is unobjectionable where agency reasonably concluded that, based on its evaluation of the offeror's technical and experience and past performance ratings and its price, the proposal was not among the most highly rated; determination that protester's price was unrealistically low was reasonable.
2. Agency's evaluation of protester's experience for risk rating purposes properly took into consideration the fact that protester had not performed contracts that were similar in size and scope to the contract contemplated by the solicitation.

DECISION

Molina Engineering, Ltd./Tri-J Industries, Inc. Joint Venture protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAPC50-00-R-0001, issued by the Department of the Army to obtain maintenance services and minor construction for family military housing at the Aliamanu Military Reservation, Hawaii. Molina contends that the Army improperly concluded that its price was unrealistically low and unreasonably evaluated its proposal with respect to past performance.

We deny the protest.

The types of services needed to maintain the 2,585 housing units at Aliamanu correspond with the three contract line items (CLIN) set forth in the solicitation:

service calls and other recurring work; change-of-occupancy housing maintenance; and other indefinite-quantity work. RFP § B. The solicitation contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract, with a 1-year base period and up to four 1-year option periods. RFP §§ C.1, F.1, F.3, L.4. The solicitation was limited to qualifying section 8(a) firms.¹ RFP §§ I.10, L.9.

The Army intended to award the contract to the offeror whose proposal represented the best value. RFP §§ L.3.f.1, 4. Offers were to be evaluated under the following factors: experience and past performance; technical; oral presentations; and price. RFP §§ M.2, M.3. The experience and past performance factor was equal in importance to the technical factor and oral presentation factor when combined. RFP § M.3. Price was not scored, but its importance was considered approximately equal to all non-price factors when combined. *Id.* The solicitation contemplated conducting price realism analyses of the price proposals. RFP §§ L.12.B.3.d, M.4.d.1.

The initial evaluation was to be based on the offerors' experience and past performance, technical, and price proposals. After evaluating these proposals, the Army planned to establish a competitive range. The contracting officer intended to limit the number of proposals in the competitive range to the number that would permit an efficient competition among the most highly rated proposals. RFP § L.12.B.1.b., L.3.f.4. Oral presentations would be made by only the offerors within the competitive range. RFP § M.2. The Army received 12 proposals in response to the solicitation.

The source selection evaluation team used color/risk ratings to evaluate proposals under the experience and past performance factor and color ratings to evaluate under the technical factor,² and also conducted price realism analyses. The contracting officer completed the final evaluation and made his competitive range determination the next day. He found that the five most highly rated proposals formed a natural cluster in pricing and categorized them as the "Group 2" proposals. Competitive Range Determination (CRD) ¶ 5. The offers of Molina and another firm--the "Group 1" proposals--received lower ratings and proposed substantially

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), authorizes the Small Business Administration (SBA) to contract with government agencies and arrange for performance of those contracts by awarding subcontracts to small socially and economically disadvantaged businesses.

² The color/risk ratings for the experience and past performance factor were blue/very low risk; green/low risk; yellow/moderate risk; amber/high risk; red/very high risk; and gray/unknown risk. The color ratings for the technical factor were blue/excellent understanding; green/good understanding; yellow/acceptable understanding; amber/shallow understanding; and red/clear misunderstanding. Source Selection Evaluation Plan § IV.A.1.

lower prices than did the Group 2 offerors. The offers of the remaining firms--the "Group 3" proposals--received lower ratings and proposed substantially higher prices than did the Group 2 firms. Id.

For reasons discussed below, the contracting officer determined that Molina's proposed price was unrealistically low. In addition, the firm's technical rating was yellow/acceptable, and its experience and past performance rating was yellow/moderate risk, based on a green/low risk rating for past performance and an amber/high risk rating for experience. The amber rating resulted from the Army's finding that both joint venture firms lacked significant experience in contracts of this type and/or magnitude. The contracting officer believed that this limited experience might be a contributing factor to the firm's unrealistically low price. CRD ¶ 7.a.2.

The contracting officer established a competitive range of three offerors drawn from Group 2 and eliminated the remaining offerors, including Molina. Molina filed an agency-level protest when it learned of the Army's decision, and filed the instant protest prior to receiving an agency response. The firm takes issue with the Army's decision to eliminate it from the competitive range, contending that the Army improperly concluded that its price was unreasonably low and unreasonably evaluated it as lacking significant experience in contracts of this type and/or magnitude.

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency. In reviewing an agency's evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair and reasonable and consistent with the evaluation criteria. Matrix Gen., Inc., B-282192, June 10, 1999, 99-1 CPD ¶ 108 at 3. A protester's mere disagreement with an agency's evaluation does not, without more, establish that the evaluation was unreasonable. Beneco Enters., Inc., B-278591, Feb. 17, 1998, 98-1 CPD ¶ 91 at 3.

Contracting agencies are not required to retain in the competitive range a proposal that is not among the most highly rated ones or that the agency otherwise reasonably concludes has no realistic prospect of award. Federal Acquisition Regulation (FAR) § 15.306(c)(1); Matrix Gen., Inc., supra, at 3; SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. Here, the record shows that, while Molina submitted an acceptable proposal, it was not included in the competitive range because it was deemed to contain unrealistically low pricing and because the non-price aspects of its proposal were not rated as highly as were the three competitive range offers. As a result, it was not among the most highly rated proposals.

In evaluating an offeror's proposed price, the Army's concern was to determine whether the price reflected the firm's understanding of the project and ability to successfully organize and perform the contract; whether the price was reasonable when compared to the independent government estimate (IGE) and reflected the fair market value; whether the price was reasonable when compared to any similar complex efforts; and that the price was neither excessive nor insufficient for the effort to be accomplished. Unrealistically low prices might result in eliminating the proposal from the competitive range on the basis that the offeror does not understand the project. RFP §§ M.4.d.1, L.12.B.3.d.2. Moreover, the Army might determine a proposal is unacceptable if the prices are materially unbalanced between line items. RFP § L.3.f.8.

Since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as here, provide for a price realism analysis in the solicitation of fixed-price proposals.³ Volmar Constr., Inc., B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 5. The FAR sets forth a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including a comparison of the prices received with each other; with previous contract prices for the same or similar services; or with the IGE. FAR § 15.404-1(b)(2). The agency's determination was premised on two of these techniques.

The Army first compared Molina's proposed price with the other prices it received. The firm's price was significantly below the price of the next-lowest offer, and lower still than what the agency termed the fair market price, which was obtained by averaging the prices of the Group 2 offerors. This pricing disparity led the Army to believe that Molina's price was unrealistically low. The Army's concerns were heightened by the apparent correlation between Molina's lower non-price ratings and its lower price; the Army believed the firm's limited experience could be a contributing factor to its unrealistically low price.

The Army next compared Molina's proposed price with the IGE. The Army assumed the responsibility for providing this requirement's acquisition support, which had long been provided by the Navy, with this procurement. The original Navy IGE was largely based on the current contract pricing, developed more than 5 years ago. The Army explains that, while this solicitation is the follow-on, it is not a carbon copy of the current contract: several estimated quantities have increased, several new work

³ Molina incorrectly alleges that the Army's concerns with its low pricing constituted a pass/fail determination of nonresponsibility of a small business that the agency was required to refer to the SBA for consideration under that agency's certificate of competency procedures. The Army's concerns reflected its evaluated assessment of the firm's understanding of the RFP's requirements, consistent with the evaluation scheme. See Sutron Corp., B-270456, B-270456.2, Mar. 7, 1996, 96-1 CPD ¶ 143 at 7.

requirements have been added, and the current pricing did not account for subsequent wage and rate increases.⁴ Agency Response to Molina's Mar. 8, 2000 Letter at Agency Report, Tab 19. As a result, before the RFP was issued, the Army Corps of Engineers reviewed the Navy IGE with a resulting upward adjustment of several million dollars. After the evaluation, this adjusted IGE was reexamined because it appeared to be substantially higher than the fair market price. A comparison between the IGE and the fair market price resulted in a downward revision of the IGE, to a level almost exactly the same as the Navy's original IGE but still substantially higher than the fair market price. The contracting officer attributes the difference between the IGE and the fair market price to the current competitive market in Hawaii.

Molina objects that the IGE was "tampered with" and that it is no longer independent, but was distorted to conform to the fair market price. We disagree. The competitive range determination chronicles the revisions made to the adjusted IGE and provides the rationale for each adjustment. CRD ¶ 6. While some adjustments were made in comparison with the fair market pricing—many others were made in comparison with other contract prices for similar work--this fact alone does not mean that the IGE was distorted. Instead, the Army merely adjusted the IGE, in the face of competitively provided, market prices, to make it more accurate. As for Molina's assertion that the most reliable estimate was the original Navy IGE, we note that the IGE as adjusted after the evaluation was almost identical to the original Navy IGE.⁵

⁴ For this reason, Molina's argument that the Army should have compared its proposed pricing with the existing contract price is unpersuasive, as it would not be a valid comparison. See FAR § 15.404-1(b)(2)(ii).

⁵ While apparently not dispositive in the decision to eliminate Molina's proposal from the competitive range, the contracting officer also concluded that Molina's prices for the three major categories of work were unbalanced. As noted above, the three categories are service calls/recurring work (CLIN 0001), change-of-occupancy housing maintenance (CLIN 0002), and other IDIQ work (CLIN 0003). The RFP specifies that CLIN 0001 is the guaranteed minimum to be ordered under the contract. RFP § B.4. Molina's pricing for CLIN 0001 was higher than the fair market price for the work, while its pricing for CLINs 0002 and 0003 was substantially lower than the fair market pricing for the same work. This raised a particular concern with respect to CLIN 0003, which comprised 53 percent of the required effort. Molina's objection to the Army's conclusion does not directly address--and, in fact, partly concedes--the heart of the agency's concern: that Molina had priced part of the work for CLINs 0002 and 0003 under CLIN 0001.

We turn now to the Army's evaluation of Molina's proposal under the experience and past performance factor. With respect to the experience component of the factor, Molina argues that the Army did not give adequate consideration to its only family housing maintenance contract when it found that both joint venture firms lacked significant experience in contracts similar in scope and size to the instant requirement.

In reviewing a protest against an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Support Servs., Inc., B-282407, B-282407.2, July 8, 1999, 99-2 CPD ¶ 30 at 3. We find that the evaluation here was reasonable.

The RFP instructed offerors that performance risk was to be evaluated considering overall experience and past performance under existing and previous contracts. Provided that the offeror had prior contracts, which was the case here, the Army planned to evaluate experience in projects that are similar in type, scope, magnitude, and complexity to the instant procurement.⁶ RFP § M.4.a.1.a. The record shows that, despite post-protest statements suggesting otherwise, the Army evaluators considered Molina's family housing maintenance contract at its appropriate dollar value, and that Molina was given credit for having performed that contract. Indeed, the Army specifically cites that contract as evidence the firm had some family housing maintenance contract experience. Technical Evaluation Document at 30; Army Response to Request for Supplemental Information, May 3, 2000, attachs. 2, 3.

The reason for Molina's amber/high risk rating was twofold. First, the firm's sole family housing maintenance contract was for a dollar value substantially lower than the value of the instant contract. While the work performed was similar, with apparently similar rates of service calls and change-of-occupancy maintenance work, the overall contract was much smaller. Second, Molina's other contracts were not for overall family housing maintenance--the requirement here--but for parts of that work, such as the repair of window systems and playgrounds, the installation of gas meters, and exterior painting, lead and asbestos abatement. Molina's Proposal at Tab 4. As a result, even though the work under the contracts was similar, in whole or in part, we think the agency reasonably could conclude that experience on a number of smaller contracts does not equate with the performance of a single, larger contract such as the one here. See Support Servs., Inc., *supra*, at 5-6. While Molina argues that dollar value, or size, should not be considered in determining whether its

⁶ Molina incorrectly asserts that the Army should have considered the experience of one of its principals in evaluating its experience; the RFP did not provide for such consideration.

prior contracts were the same or similar to the current procurement, size is a proper consideration in determining whether an offeror has experience performing similar contracts. See Proteccion Total/Magnum Sec., S.A., B-278129.4, May 12, 1998, 98-1 CPD ¶ 137 at 6.

The protest is denied.

Comptroller General
of the United States