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Decision

Matter of: Portfolio Disposition Management Group, LLC

File: B-293105.7

Date: November 12, 2004

James S. DelSordo, Esq., Halloran & Sage, for the protester.

J. Alex Ward, Esq., Martina E. Vandenberg, Esq., and Ayodele T. Carroo, Esq., Jenner & Block, for Southwest Alliance of Asset Managers, LLC, an intervenor.

R. René Dupuy, Esq., Department of Housing and Urban Development, 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 failed to bring a certain weakness to protester's attention during discussions, and that discussions therefore were inadequate, is denied where record shows that agency in fact brought the weakness to protester's attention, and rated protester's proposal as good after reviewing the protester's revisions; agency was not required to raise the weakness in repeated rounds of discussions.

DECISION

Portfolio Disposition Management Group, LLC (PDMG) protests the award of two contracts to Southwest Alliance of Asset Managers, LLC (SAAM) under request for proposals (RFP) No. R-OPC-22505, issued by the Department of Housing and Urban Development (HUD) to obtain management and marketing services in connection with the disposition of single-family homes and other property owned by HUD.

PDMG asserts that the agency failed to provide it with adequate discussions, and misevaluated SAAM's price proposals.¹

We deny the protest.

¹ PDMG raised a large number of other assertions in its initial protest. The agency provided a detailed response to these issues in its report, and the protester did not address the issues in its comments on the report. Under these circumstances, we deem those issues abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶104 at 8.

The solicitation contemplated the award of indefinite-delivery, indefinite-quantity, fixed-unit-price contracts in 24 geographic regions for management and marketing services in connection with the disposition of single-family homes owned by, or in the custody of, HUD. At issue in this protest are the contracts for Denver Area 5, which covers properties located in New Mexico and north Texas, and Denver Area 6, which covers properties located in south Texas. The RFP advised offerors that the agency would make award on a “best value” basis, considering price and six non-price evaluation factors, with the non-price factors considered significantly more important than price. Prices were to be evaluated for reasonableness.

The agency received numerous proposals for both areas and, after evaluating them, established a competitive range for each area. The agency engaged in two rounds of discussions, at the conclusion of which PDMG’s and SAAM’s proposals for both areas received technical ratings of excellent with very low risk. Agency Report (AR), exh. 9, at 2; exh. 10, at 2. In Area 5, PDMG’s final price was \$104,244,396, while SAAM’s was \$67,384,290. AR, exh. 12, attach. 2. In Area 6, PDMG’s final price was \$62,802,864, while SAAM’s was \$39,619,140. AR, exh. 13, attach 1. On the basis of these evaluation results, the agency awarded contracts to SAAM for both areas, finding that its and PDMG’s proposals were technically equal, and that SAAM’s low prices therefore made its proposal the best value. AR, exh. 11, at 3, 7.

PDMG asserts that the agency improperly failed to conduct adequate discussions for the Area 5 and 6 awards and, as a result, treated offerors unequally. Specifically, PDMG maintains that, after the initial rounds of discussions—during which the agency asked PDMG about its experience as it related to performing the RFP’s mortgagee compliance requirements—the agency continued to have a concern in the area, but did not again raise it with PDMG. The protester contrasts this with the agency’s actions in conducting discussions with SAAM; in both the first and second rounds of discussions, the agency pointed out to SAAM that its prices for certain line items appeared low. PDMG asserts that the agency’s repeated discussions with SAAM in the area of price, compared to the single round of technical discussions with PDMG covering the agency’s experience concern, evidence disparate treatment.

This argument is without merit. PDMG’s proposals received good ratings in the area of experience following the agency’s discussions in the area. AR, exhs. 9 at 80, 10 at 57. Agencies are not required to discuss every element of a technically acceptable proposal that receives less than the maximum possible score, nor are they required to afford an offeror multiple opportunities to cure a weakness remaining in a proposal that previously was the subject of discussions. Bioqual, Inc., B-259732.2., B-259732.3, May 15, 1995, 95-1 CPD ¶ 243 at 4-5. In any case, the record shows that the two firms were given the same opportunity to revise their proposals as to both technical matters and price during the first round of discussions, AR, exhs. 5, 6, 7, 8, and that revisions for both firms were limited to the pricing proposals during the second round. Id. Thus, contrary to PDMG’s assertion, both firms received virtually

identical discussions, albeit in different proposal areas depending on the particulars of their offers.²

PDMG asserts that the agency's price reasonableness evaluation failed to take cognizance of the fact that SAAM's prices were too low. This argument is without merit. A price reasonableness evaluation is generally conducted for the purpose of ensuring that a firm's prices are not unreasonably high, as opposed to unreasonably low, since the contractor, not the government, bears the risk of loss in the event that the firm's prices are too low to cover the cost of performance. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. To the extent that PDMG is asserting that the agency should have reviewed SAAM's prices for realism, the protest is untimely, since the solicitation did not provide for a realism analysis; if PDMG believed such an analysis was necessary, it was required to protest on this basis prior to the closing time for receipt of offers. 4 C.F.R. § 21.2(a)(1) (2004).

The protest is denied.

Anthony H. Gamboa
General Counsel

² Moreover, since PDMG's proposals received a final rating of excellent with low risk--the highest rating available--it is not apparent how PDMG could improve its ratings even if it were provided further discussions; there thus would be no basis for finding that PDMG was competitively prejudiced. See Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ ___ at 7.