



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: American Access, Inc.

File: B-414137; B-414137.2

Date: February 28, 2017

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Arnold & Porter Kaye Scholer LLP, for The Landmark Group, Inc., d/b/a National Ramp, an intervenor.
Brian R. Reed, Esq., Department of Veterans Affairs, for the agency.
Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's price evaluation and selection decision on grounds that the agency failed to perform a price realism analysis is denied where the solicitation did not contemplate a price realism analysis.

DECISION

American Access, Inc., of Bartlett, Tennessee, challenges the awards of contracts to National Ramp, of Valley Cottage, New York, and TJ Rampit Inc., of Coldwater, Michigan, under request for proposals (RFP) No. VA240C-14-R-0015, issued by the Department of Veterans Affairs (VA) for modular ramps. The protester argues that the agency's price evaluation and selection decision were flawed.

We deny the protest.

BACKGROUND

The RFP, issued on October 9, 2015 under Federal Acquisition Regulation (FAR) parts 12 and 15 and set aside for small businesses, sought portable, modular ramps¹ for three service area office (SAO) regions: SAO-East, SAO-West, and

¹ The ramps are to be installed at the entryway outside the homes of veterans who cannot navigate stairs. Agency Report (AR), Memorandum of Law (MOL) at 1-2.

SAO-Central.² RFP³ at 1, 14. The solicitation, as amended, contemplated the award of multiple fixed-price indefinite-delivery requirements contracts with a one-year base period and four one-year options.⁴ Id. at 5, 32. Award was to be made on a best-value basis, considering the following evaluation factors in descending order of importance: technical capability, quality control program, past performance, veteran-owned business participation, and price. Id. at 67-68. The solicitation also stated that the non-price factors, when combined, were significantly more important than price. Id. at 68.

As relevant here, the solicitation informed offerors that offers would be evaluated “for award purposes” by adding the total price for all option periods to the total price for the base period, and would be evaluated for fairness and reasonableness. Id. at 67-68, 73. The solicitation also informed offerors that an offer may be determined unacceptable if the option prices were significantly unbalanced. Id. at 73.

Price proposals were to be submitted using a schedule on which offerors were to insert unit prices, including base and options prices, for each contract line item number (CLIN)⁵ for the SAO or VISNs for which the offerors were competing.⁶ See id. at 57-58; see also id., attach. 1, Schedule of Items.

The agency received seven timely proposals, including proposals from American Access, TJ Rampit, and National Ramp. A technical evaluation team (TET) and lead contract specialist evaluated the technical proposals. See Tab 8, Best Value Determination at 13-14. The contracting officer (CO), who was also the source selection authority (SSA) for this procurement, evaluated the price proposals. See AR, CO Statement of Facts (COS) at 4-5. Discussions were conducted with five

² The management of the VA’s healthcare facilities in the United States is organized into three large SAO regions and within each of the three regions, facilities are organized within smaller veteran-integrated service networks (VISNs). AR, MOL at 2. Id. This protest concerns only the awards made in SAO-Central region for VISNs 9, 10, 12, 15, 16, and 23. Id. at 4.

³ The solicitation was amended 14 times. All citations to the solicitation are to the final version, as amended on July 18, 2016.

⁴ The solicitation contemplated the award of three contracts by region but also reserved the right to make awards by VISN or a combination of VISNs. RFP at 14.

⁵ The majority of the CLINs consisted of ramp components (e.g., platforms, base ramps, thresholds etc.) of varying lengths and for which the agency provided estimated quantities. See RFP, attach. 1, Schedule of Items.

⁶ The solicitation allowed offerors to submit price proposals for the entire region or alternate price proposals for one or more VISNs. See RFP at 57.

offerors that were included in the competitive range. See AR, Tab 8, Best Value Determination at 002334.⁷ The agency received timely final proposal revisions from four offerors, including the protester and both awardees.⁸ Id.

As a result of the agency’s evaluation, all four proposals were rated good under the technical capability and quality control program factors; substantial confidence for the past performance factor; and some consideration for the veteran-owned business participation factor.⁹ Id. at 002349.

The four offerors’ total proposed prices for the base year and four option years by VISN are as follows:

	American Access	National Ramp	TJ Rampit	Offeror A
VISN 9	\$18,143,297.33	\$14,323,534.70	\$14,830,232.75	\$14,314,299.83
VISN 10	\$39,128,032.59	\$30,364,924.36	\$31,022,785.36	\$29,594,673.30
VISN 12	\$8,664,286.79	\$6,500,708.25	\$6,874,366.87	\$6,273,408.58
VISN 15	\$19,667,790.22	\$14,523,385.45	\$15,005,706.85	\$13,794,027.09
VISN 16	\$36,059,419.34	\$27,545,179.99	\$28,615,030.19	\$26,980,064.73
VISN 23	\$17,289,461.14	\$13,696,649.18	\$15,123,109.74	\$13,338,492.65

Id. at 002350-002351. As can be seen from this chart, American Access submitted the highest price for each VISN.

The SSA performed a comparative assessment and tradeoff analysis for each VISN. Id. at 002352-002377. In these tradeoffs, the SSA found that the competing offers all possessed strengths that were equivalent to those of the awardees, but identified several significant strengths in the awardees’ proposals that were worth the price premiums associated with their proposals, as well as strengths of the competing offerors that were not worth the price premiums associated with their

⁷ The agency used a Bates numbering system in preparing the majority of its agency report. Where available, this decision uses the Bates numbers assigned by the agency for its citations.

⁸ All four offerors submitted offers for the entire region, as well as for each VISN within this region. See AR, Tab 8, Best Value Determination at 002317-002318.

⁹ The SSA raised National Ramp’s rating under the quality control factor from fair to good because the SSA found that the TET’s evaluation supported a good rather than fair rating. AR, Tab 8, Best Value Determination at 002349. The SSA also identified additional significant strengths under this factor and the technical capability factor. Id. at 002343, 002344, 002349.

proposals.¹⁰ Id. at 002355, 002358-002361, 002364-002365, 002368, 002372, 002375-002376. As a result, the SSA selected National Ramp for award of VISNs 9, 12, 15, 16, and 23, for a total price of \$80,448,446.41; and TJ Rampit for the award of VISN 10 for a total price of \$31,022,785.36. Id. at 002377. The SSA found these prices to be fair and reasonable based on adequate price competition. Id.; see also id. at 002350.

On August 16, 2016, American Access was notified of the awards. Following a debriefing, American Access filed an agency-level protest, which was denied in part and dismissed in part as untimely. See Protest, exh. C, Agency-level Protest; id., exh. D, Agency-level Protest decision. This protest followed.

DISCUSSION

The protester primarily argues that the agency's price evaluation was unreasonable and that its best-value determination was therefore flawed.¹¹ American Access first argues that while the solicitation, as amended, did not explicitly contain any requirement to perform a price realism analysis,¹² the agency was nonetheless required to perform a price realism analysis because the solicitation provided for an unbalanced pricing analysis. See Protest at 9-19; Protester's Comments at 2-21. We disagree.

Generally, for fixed-price contracts, an agency may conduct a price realism analysis for the limited purpose of assessing whether an offeror's low price reflects a lack of technical understanding or risk (see FAR § 15.404-1(d)(3)), but it may do so only

¹⁰ Of relevance here, in the tradeoffs between the awardees' and American Access's proposals, the SSA found that "American Access's proposal contains strengths equivalent to [National Ramp's or TJ Rampit's] However in the Contracting Officer's opinions, these strengths do not merit the higher price of [26 to 43 percent]" associated with American Access's proposal. AR, Tab 8, Best Value Determination at 002355, 002360, 002364, 002368, 002372, 002376.

¹¹ In filing and pursuing its protest, American Access has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's assertions and find no basis to sustain its protest.

¹² Amendment 2 removed from the solicitation the following language: "Unrealistically low proposed prices may be grounds for eliminating a proposal from competition either on the basis that either the offeror does not understand the requirement or the offeror has made an unrealistic proposal." AR, MOL at 2-3; see RFP, amend. 2 at 000371, 000378. Additionally, a response to a solicitation question, included in this amendment, confirmed that a price realism analysis was not contemplated by the solicitation. See AR, MOL at 3; see also RFP, amend. 2 at 000536.

when offerors have been advised that the agency will conduct such an analysis. National Disability Rights Network, Inc., B-413528, Nov. 16, 2016, 2016 CPD ¶ 333 at 9; Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Absent a solicitation provision advising offerors that the agency intends to conduct a price realism analysis, agencies are neither required nor permitted to conduct such an analysis in awarding a fixed-price contract. Id. Here, it is undisputed that the solicitation, as amended, did not provide for a price realism analysis and as such, the agency was not required to conduct one.

We further do not find persuasive the protester's argument that the agency was required to perform a price realism analysis to determine the risk of unbalanced pricing. In this regard, American Access contends that, based on its own analysis of the awardees' prices for certain ramp configurations, the awardees' prices are unbalanced, and the agency is at risk of paying more for the same-sized (but differently configured) ramp during contract performance. See Protester's Comments at 4-12, 18-20; id., exh. B, Chart Proving Unbalanced Pricing.

In response, the agency asserts that it analyzed prices for unbalancing, explaining that in addition to comparing the offerors' total proposed prices for the base and option years per VISN, the agency also performed a detailed price analysis by comparing the offerors' proposed prices for each CLIN. AR, COS at 000147-000148; see also AR, Tab 9, Price Analysis Spreadsheet. When the agency identified the highest and lowest prices for each CLIN, the agency did not find any unbalanced pricing, either at the CLIN level or in the option-year pricing. Id.; AR, MOL at 10.

As a general matter, unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. FAR § 15.404-1(g)(1). With respect to unbalanced pricing generally, the FAR requires that contracting officers analyze offers with separately-priced line items or subline items, to detect unbalancing. FAR § 15.404-1(g)(2). While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by overstatement of prices because low prices (even below-cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing. See Crown Point Systems, B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 5; AIS Eng'g, Inc., B-410246, B-410246.2, Nov. 21, 2014, 2015 CPD ¶ 5 at 3. Our Office reviews the reasonableness of an agency's determination about whether a firm's prices are unbalanced, and an agency's determination as to whether the unbalanced prices pose an unacceptable risk. Triumvirate Envtl., Inc., B-406809, Sept. 5, 2012, 2012 CPD ¶ 244 at 5.

Here, the protester fails to make the threshold showing required to prevail on this allegation, namely that one or more of the prices was over or understated. See InfoZen, Inc., B-411530, B-411530.2, Aug. 12, 2015, 2015 CPD ¶ 270 at 7. Further,

while the protester argues that the agency was required to perform a “more in-depth analysis by comparing the total pricing for different configuration of ramps,”¹³ see Protester’s Comments at 6, the manner and depth of an agency’s price analysis is a matter within the sound exercise of the agency’s discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Gentex Corp.--Western Operations, B-291793 et al., Mar. 25, 2003, 2003 CPD ¶ 66 at 27-28. Here, the agency’s price analysis not only compared the total proposed prices by VISN in accordance with the solicitation, but also compared prices proposed for each CLIN, identifying highest and lowest prices for each CLIN. On this record, we find the agency’s price analysis unobjectionable.

Because we find that the terms of the solicitation neither required nor permitted the agency to perform a price realism evaluation in this procurement, we need not address the protester’s remaining arguments challenging the awards to National Ramp and TJ Rampit. This is so because American Access would not be in line for an award if its protest were sustained, and therefore, is not an interested party. See Protest at 19-20; Protester’s Comments at 26-35; Supp. Protest at 5-29. See also 4 C.F.R. §§ 21.0(a)(1), 21.1(a); JSF Sys., LLC, B-410217, Oct. 30, 2014, 2014 CPD ¶ 328 at 4. Here, Offeror A’s proposal was the lowest-priced offer and received the same non-price evaluation factor ratings as American Access’s proposal for each VISN. The protester has raised no challenges to the evaluation of Offeror A’s non-price proposal nor has American Access raised any viable or meaningful arguments challenging its own offer. Accordingly, on this record, even were we to sustain American Access’s protest of the awards to National Ramp and TJ Rampit, American Access would not be in line for award, and therefore, is not an interested party to maintain its remaining bases for protest.

The protest is denied.

Susan A. Poling
General Counsel

¹³ We note that the protester’s own analysis shows that the protester’s price for each of the sample configurations was consistently higher than those of the awardees. See Protester’s Comments, exh. B, Chart Proving Unbalanced Pricing.