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Decision

Matter of: Navarro Research and Engineering, Inc.

File: B-299981; B-299981.3

Date: September 28, 2007

Brian W. Craver, Esq., Person & Craver, LLP, for the protester.
Joseph P. Hornyak, Esq., and Allison V. Feierabend, Esq., Holland & Knight, LLP, for The S.M. Stoller Corporation, an intervenor.
Charmaine A. Howson, Esq., and Patricia D. Graham, Esq., Department of Energy, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation contemplated award of fixed-price contract, price realism analysis was reasonable where agency compared proposed prices to government estimate and other proposed prices, and ensured that prices reflected specified labor categories and hours specified by RFP.
 2. Protest that awardee's proposal unreasonably received evaluation credit for exceeding solicitation requirements is denied; where solicitation provides for award on best value basis, agency reasonably may assess as a proposal advantage degree to which proposal exceeds minimum solicitation requirements.
 3. Protest that awardee received improper competitive advantage due to status as incumbent contractor is denied; agency is not required to discount competitive advantage gained by virtue of performance as incumbent contractor.
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DECISION

Navarro Research and Engineering, Inc. protests the award of a contract to The S.M. Stoller Co. under request for proposals (RFP) No. DE-RP01-06LM00060, issued by the Department of Energy (DOE) for support services. Navarro complains that the agency improperly evaluated offerors' technical proposals and failed to perform an adequate price realism analysis.

We deny the protest.

DOE's legacy program is responsible for managing land structures and facilities that were associated with nuclear weapons production during the cold war and are now closed. The RFP sought support services for this program, and provided for award of a contract on a time-and-material basis, with provision for a base fee and award fees. The RFP indicated that the award would be made on a "best value" basis considering technical factors--technical approach, management approach, personnel qualifications and staffing, corporate experience, and past performance--and price; the technical factors were more important than price. RFP at 88-92. Regarding price, the RFP, as amended, included a list of 15 labor categories, with multiple experience levels and the estimated number of hours that each level could be expected to perform annually. RFP at 381. The RFP also specified a dollar amount that each offeror was to include in its proposal for other direct costs. RFP at 383. Offerors were to propose a loaded, fixed, hourly rate (minus fee) for each labor category, as well as a base fee and an award fee. RFP at 78-79. Price was to be evaluated for reasonableness, realism, and completeness. RFP at 92.

The agency received five proposals, including Navarro's and Stoller's. A technical evaluation committee (TEC) reviewed and scored the proposals under each factor. The combined technical factors were worth 1000 points with technical approach worth 400, management approach 250, personnel qualifications and staffing 200, corporate experience 100 and past performance 50. Agency Report (AR) at 6. Of the five proposals, Stoller's was ranked first, with a technical score of 920 (of 1,000 available) points--320 (of 400) for technical approach, 250 (of 250) for management approach, 200 (of 200) for personnel qualifications and staffing, 100 (of 100) for corporate experience, and 50 (of 50) for past performance. AR at 7. Navarro's proposal was ranked fourth technically, with a score of 465 points--200 for technical approach, 125 for management approach, 40 for personnel qualifications and staffing, 50 for corporate experience, and 50 for past performance. *Id.* Stoller's proposed price was lowest at \$167,656,172, and Navarro's was the highest at \$213,677,929. AR at 8. Based on the technical scores and price combined, the TEC ranked Stoller's proposal first overall and Navarro's fourth. *Id.* The source selection authority (SSA) reviewed the technical evaluation report and selected Stoller for award. Navarro protests the award decision.

PRICE REALISM ANALYSIS

Navarro challenges the adequacy of the agency's price realism analysis. In this regard, section M of the RFP stated that proposals "will be evaluated to determine if the proposed costs are realistic and consistent with the Technical Proposal with regard to the nature, scope, and duration of the work to be performed. Inconsistencies between the Cost/Price Proposal and other portions of the proposal could raise concerns regarding the offeror's understanding of the requirements and ability to perform the work for the proposed price." RFP at 92.

Where a fixed-price contract—including a fixed-rate contract such as this one—is to be awarded, an agency may provide for the use of a price realism analysis in a solicitation for such purposes as measuring an offeror’s understanding of the solicitation’s requirements and for assessing the risk inherent in an offeror’s proposal. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶189 at 4. The Federal Acquisition Regulation (FAR) identifies a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including comparison of the prices received with each other and with the independent government estimate, and analysis of pricing information provided by the offeror. FAR § 14.404-1(b)(2). The nature and extent of a realism analysis ultimately are matters within the agency’s discretion, unless the agency commits itself to a particular methodology in the solicitation. Id.

DOE’s realism analysis consisted of comparing the proposed rates for the specified labor categories to both the government estimate and the other proposed prices, and the use of statistical analysis techniques to analyze the information. Technical Evaluation Report (TER) at 37-46 and attach. 4. As a result of its analysis, the agency concluded that all offerors’ total prices were realistic, including Stoller’s, which was approximately 11.6 percent lower than the government estimate. AR at 25, 28. In this regard, the agency found that some of Stoller’s and other offerors’ labor rates were lower than the government estimate and that some were higher, but concluded that, overall, all offerors’ proposed rates were consistent with the estimate. AR at 25. In addition, DOE verified that each offeror’s prices reflected the estimated number of labor hours for each labor category specified in the RFP.¹ We find nothing objectionable in the agency’s evaluation methodology.

Navarro complains that the realism analysis was flawed because it was based on a government estimate that was not prepared until after the proposals were received. However, there is nothing per se improper in an agency’s reliance on a government estimate revised after offers are received where it determines that the original estimate is erroneous. McCarthy Mfg. Co., B-186550, Feb. 17, 1977, 77-1 CPD ¶ 116 at 3-4. DOE explains that it reduced the government estimate after proposals were received to correct errors and to account for inapplicable and likely inaccurate assumptions. For example, among other things, DOE reduced the overhead rate assumption from 100 percent to 50 percent because the lower rate was consistent with similar contracts performed on government property. The agency also reduced the profit rate to correspond to the rates offerors actually proposed. AR at 29-30. Navarro does not challenge any specific changes made by the agency, and does not assert—and we find no reason to conclude—that the estimate itself is unreasonable. Accordingly, we find no basis for questioning the agency’s use of the revised estimate.

¹ The agency notes that a substantial part of the difference in Stoller’s and [DELETED] proposed prices was due to [DELETED]. AR at 28.

Navarro also complains that DOE's analysis was inadequate because the agency did not determine whether offerors' proposed hours were consistent with the nature, scope, and duration of the efforts described in their technical proposals, as required by the RFP. As noted above, however, the solicitation, as amended, included the labor categories and the exact number of hours for each labor category that offerors were required to use to prepare their proposals. RFP at 381. Since offerors thus were not responsible for proposing their own required hours, it obviously would have served no purpose--the RFP language aside--for the agency to separately consider whether Stoller's--or any other offeror's--hours were sufficient. The agency's failure to conduct this analysis thus does not render the evaluation unreasonable.

EVALUATION OF STOLLER'S TECHNICAL PROPOSAL

Noting that Stoller's proposal was given evaluation credit for exceeding the solicitation requirements, Navarro maintains that this was improper, since Stoller's proposal was able to exceed the requirements only because Stoller had access to information gained through its performance as the incumbent contractor.

This argument is without merit. First, there is no requirement that an agency equalize or discount an advantage gained through incumbency, provided that it did not result from preferential treatment or other unfair action by the government; neither is alleged here. Amtec Corp., B-261847, Sept. 28, 1995, 95-2 CPD ¶164 at n.5. Similarly, where, as here, a solicitation provides for award on a best value basis, an agency reasonably may assess as an evaluated advantage the extent to which a proposal exceeds the minimum requirements of the solicitation. See American Material Handling, Inc., B-297536, Jan. 30, 2006, 2006 CPD ¶ 28 at 4.² We conclude that the evaluation of Stoller's proposal was unobjectionable.

EVALUATION OF NAVARRO'S TECHNICAL PROPOSAL

Under the personnel qualifications and staffing factor, offerors were required to, among other things, "... demonstrate [their] ability to provide appropriate staffing resources over wide spread geographic locations, and under widely fluctuating workloads." RFP at 75. The RFP informed offerors that they would be evaluated on, their "demonstrated ability to recruit, retain and provide qualified key and non-key personnel to ensure sufficient staffing is available throughout contract performance, including, but not limited to, its ability to provide all necessary personnel at the time of contract award. . .", and "... for demonstrated ability to provide non-key staff at

² In any case, despite having access to Stoller's proposal, as well as the agency's evaluation of that proposal, Navarro does not identify any specific areas where Stoller received evaluation credit for exceeding the solicitation requirements.

the necessary skill levels, whether by new hire or retention of current or incumbent staff.” RFP at 90.

The TEC assigned Navarro’s proposal a significant weakness under the staffing and personnel qualifications factor on the basis that Navarro did not demonstrate the ability to select key and non-key personnel at the necessary skill level without government involvement. Navarro challenges this conclusion, asserting that it proposed a specific plan for staffing the contract; to the extent its proposal provided DOE with the [DELETED], it actually exceeded the requirements of the solicitation.³

In reviewing a protest challenging an agency’s proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Phillips Med. Sys. of N. Am., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. Here, DOE reasonably read Navarro’s proposal as providing a staffing plan that was based on [DELETED] in staffing decisions. For example, while the proposal explains that Navarro is bringing an outstanding team of key personnel with proven leadership and organization skills and outstanding technical credentials, Proposal at 79, it also states that, “... because we understand the importance of the incumbent personnel, [DELETED] . . .,” id. at 80, and that, “[DELETED]” . . ., id. Similarly, with respect to non-key personnel, the proposal provides that, “Our Staffing Plan begins with our proven ability and commitment to [DELETED]” Id. We think these statements reasonably indicated that [DELETED], and that the agency thus reasonably read them in this manner. Since there was nothing in the RFP that envisioned such [DELETED], the TEC reasonably assigned Navarro’s proposal a weakness on this ground.

PREJUDICE

Navarro challenges many of the evaluated weaknesses the agency assigned its proposal under the remaining technical factors.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

In selecting Stoller’s as the best value proposal the SSA relied on the point scores and the strengths in Stoller’s proposal. Source Selection Statement at 3, 4. As discussed above, we find no basis to question DOE’s evaluation of Stoller’s

³The TEC assigned Navarro’s proposal two significant weaknesses under the personnel qualifications and staffing factor. Navarro does not challenge the second weakness.

proposal--and its score of 920 points--or the evaluation of Navarro's proposal under the personnel staffing and qualifications factor. Even if Navarro's proposal received the maximum number of points under the other technical factors (which, in fact, is not possible, since Navarro does not challenge one significant weakness under the technical approach factor and, under the scoring plan, a proposal with a significant weakness could not receive the maximum score, AR at 6-7), its score would increase only to 840 points (40 points under the personnel qualifications factor and the maximum score for every other factor). Given that Stoller also enjoyed a \$46 million price advantage, Navarro has not demonstrated a reasonable possibility that its proposal would be selected for award even if we found merit to its additional evaluation challenges. Navarro thus was not competitively prejudiced by any of these errors, and we therefore need not consider them.⁴

The protest is denied.

Gary L. Kepplinger
General Counsel

⁴ In a supplemental protest filed on August 3, 2007, Navarro argues that, "The relationship between Stoller, a small business, and its large business subcontractors is violative of the Small Business Administration (SBA) rules, and renders Stoller ineligible for award." Supplemental Protest at 4. However, matters such as this relating to an offeror's eligibility for award as a small business are for consideration by SBA, not our Office. 4 C.F.R. § 21.5(b)(1) (2007).