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Decision

Matter of: SaxmanOne, LLC

File: B-414748; B-414748.3

Date: August 22, 2017

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DIGEST

1. Protest that the agency misevaluated proposals with respect to technical, past performance, and price factors is denied where the record shows that the agency evaluated proposals consistent with the solicitation and applicable statutes and regulations.

2. Protest that the agency improperly determined that the awardee was a responsible offeror is denied where the record shows that the agency reasonably considered the firm's alleged debts and pending bankruptcy litigation.

DECISION

SaxmanOne, LLC, of Manassas, Virginia, protests the award of a contract to Information Sciences Consulting, Inc. (ISCI), of Manassas, Virginia, under request for proposals (RFP) No. M95494-17-R-0002, issued by the United States Marine Corps for motorcycle safety training services. SaxmanOne argues that the agency misevaluated proposals and unreasonably found that ISCI was a responsible offeror.

We deny the protest.

BACKGROUND

The Marine Corps issued the RFP on December 20, 2016, as a small business set-aside, for motorcycle safety training services. RFP at 1. Specific courses to be

offered included Levels I, II, and III motorcycle training; dirt bike school training; all-terrain vehicle training; recreational off-highway vehicle training; and driver improvement training. RFP, Performance Work Statement (PWS) ¶¶ 5.0-5.7. Courses were to be offered at 15 Marine Corps installations throughout the United States. PWS at ¶ 4.0. The RFP contemplated the award, on a best-value tradeoff basis, of a fixed-price, indefinite-delivery, indefinite-quantity contract with a 9-month base period and four 1-year option periods. Agency Report (AR), Tab 8, Solicitation Amendment 0003 at 3.

Proposals were to be evaluated based on total evaluated price¹, and the following three non-price factors, listed in descending order of importance: technical capabilities, staffing plan, and past performance. RFP at 70. Under each non-price factor, proposals would be assigned an overall adjectival rating; when combined, the non-price factors were deemed significantly more important than price.² Id.

The agency received proposals from three offerors, including Saxman and ISCI. The final evaluation produced the following results:

	Technical Capabilities	Staffing Plan	Past Performance	Total Evaluated Price	Total Award Price
ISCI	Outstanding	Good	Satisfactory Confidence	\$6,863,575.34	\$9,587,751.30
Saxman	Good	Outstanding	Satisfactory Confidence	\$7,091,840.04	\$13,832,117.61

¹ The record shows that the total award prices and total evaluated prices differed. The agency amended the RFP to allow offerors to submit a minimum of two Level II training courses and three Level III training courses. AR, Tab 9, Amendment 0004 at 4. The agency further amended the solicitation to provide that it would only evaluate the price of each offeror's two lowest-priced Level II training courses and three lowest-priced Level III training courses. The protester and awardee nonetheless submitted pricing information for all Level II training courses and Level III training courses, which resulted in a total award price that was higher than the total evaluated price. See AR, Tab 19, Post-Negotiation Business Clearance Memorandum at unnumbered page 9.

² The adjectival rating systems used here were not set forth in the RFP but, rather, in the agency's internal evaluation documents. To evaluate technical proposals, the agency used adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable. AR, Tab 16, Final Technical Evaluation at 2. To evaluate relevancy of past performance references, the agency used adjectival ratings of very relevant, relevant, somewhat relevant, and not relevant. AR, Tab 18, Final Past Performance Memorandum at 2.

On the basis of its evaluation, the agency concluded that ISCI's proposal offered the best value to the government. AR, Tab 19, Post-Negotiation Business Clearance Memorandum at unnumbered page 12. The agency reasoned that ISCI offered the best value because it offered the highest-rated technical capability and its proposal was superior to those of other offerors. Id. After SaxmanOne received notice of the agency's source selection and its debriefing, this protest followed.

DISCUSSION

SaxmanOne raises various challenges to the agency's evaluation of proposals and its determination that ISCI is a responsible offeror. We have considered all of the allegations raised and find no basis to object to the agency's conduct of the acquisition for any of the reasons advanced by the protester. We discuss the protester's principal contentions below. We note at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. ManTech Advanced Sys. Int'l, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 3.

Technical Evaluation

SaxmanOne alleges that its proposal should have received the highest adjectival rating of outstanding because it was evaluated as having three strengths and no weaknesses. The firm alleges that the agency failed to give it the highest rating because it distinguished between strengths that would improve an offeror's ability to administer the programs versus strengths that would improve the quality of the training courses. In so doing, the protester argues that the agency applied an unstated subfactor.

Offerors were instructed that the agency would assess an offeror's ability to provide the training courses. The RFP provided that "[o]fferors will be evaluated based on their ability to convey a clear, comprehensive approach to meeting the PWS requirements, complying with [Marine Corps Order] 5100.19, and providing and/or facilitating the approved training curricula." RFP at 70.

Although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to, or encompassed by, the stated factors. Northrop Grumman Sys. Corp., B-414312 et al., May 1, 2017, 2017 CPD ¶ 128 at 12. In our view, finding strengths that improve the quality of training as highly valuable is encompassed within the stated evaluation criteria. It is axiomatic that an offeror that provides better quality training has a greater ability to provide the training than an offeror that provides lesser quality training. Further, we think that finding administrative strengths as less valuable is reasonably related to the evaluation criteria because administrative efficiency of an operation does not necessarily improve an offeror's ability to provide the training courses. Thus, we

conclude that this distinction is related to and encompassed within the stated evaluation criteria; SaxmanOne's protest to the contrary is without merit.

Past Performance

SaxmanOne asserts that the agency unreasonably evaluated ISCI's past performance when it determined that two of the firm's past performance references were "somewhat relevant." See footnote 2, *supra*. The principal focus of the protester's contention is that a past performance reference could not be rated "somewhat relevant," unless the agency found that it was somewhat similar in scope, size, and magnitude. For support, the protester relies on the agency's rating definition that describes "somewhat relevant" as involving "some of the scope and magnitude of effort and complexities" as the instant solicitation.

The RFP provided the "past performance evaluation will assess the offeror's probability of meeting the solicitation requirements." RFP at 70. Offerors were instructed to provide information for up to three previous government contracts where the effort was recent and relevant to the effort required by this solicitation. *Id.* at 68. The RFP defined relevant as "a contract that is of similar, scope, magnitude, complexity to the requirements as set forth in this solicitation." *Id.*

ISCI submitted three past performance references. AR, Tab 18, Final Past Performance Memorandum at 3-5. The agency rated ISCI's first reference as "very relevant" because it involved providing motorcycle safety services to another government agency. *Id.* at 3-4. The agency rated ISCI's second reference as "somewhat relevant" because the scope of the contract (*i.e.*, providing information security protection) was not similar, but the magnitude and complexity were somewhat similar, as the contract involved a similar sized contract and extensive experience in high-level coordination. *Id.* at 4. The agency also rated ISCI's third reference as "somewhat relevant." *Id.* at 4-5. This time the agency concluded that the scope and magnitude were not similar because the contract was for information technology service desk support and for a much smaller dollar amount; however, the agency concluded that the complexity was somewhat similar because the contract involved comparable levels of technical difficulty. *Id.* at 5. Based on all three of these ratings, the agency determined that ISCI's past performance references merited a rating of "satisfactory confidence" because it had the very relevant past performance reference and received positive reviews of its performance on all three contracts. *Id.*

Initially, we note that SaxmanOne's reliance on the agency's adjectival rating scale is misplaced because this was not set forth in the RFP. It is the RFP, not internal evaluation materials, that forms the compact between the agency and offerors about how proposals will be evaluated. *Delta Dental of California*, B-296307, B-296307.2, July 28, 2005, 2005 CPD ¶ 152 at 19. Thus, the agency was not bound to apply the rating scale according to protester's interpretation.

In light of the RFP's stated evaluation criteria, we find that the agency reasonably

evaluated ISCI's past performance references. The RFP was focused on using past performance references to assess each offeror's probability of meeting the solicitation's requirements. The record demonstrates that ISCI had experience performing essentially the same contract for another government agency and that ISCI's performance had been rated highly by that other agency. Thus, this reference demonstrated a high probability that ISCI could meet the solicitation's requirements.

The two other past performance references, although not for the same services or total dollar amount, still demonstrated that the awardee possesses relevant skills (i.e., coordinating personnel to meet high levels of agency demands) that are reasonably related to the solicited requirements and serve as some showing for how ISCI would perform on the instant contract. ISCI was rated highly by the other government agencies for its performances on those two contracts.

In any event, we note that the RFP did not require an offeror to submit three references. Instead, it provided that "[o]fferors are requested to provide information on up to three (3) previous Government contracts[.]" RFP at 68. Thus, even if the agency determined that two of ISCI's past performance ratings were not relevant, and therefore not for consideration, it would still have been able to consider ISCI's past performance reference regarding its contract to provide motorcycle safety training courses to another agency. Given that the agency's evaluation of ISCI's past performance focused heavily on its "very relevant" past performance reference, see AR, Tab 18, Final Past Performance Memorandum at 5, it follows that the agency could have rated ISCI's past performance as of "satisfactory confidence" on that past performance reference alone. See Silverback7, Inc., B-408053.2, B-408053.3, Aug. 26, 2013, 2013 CPD ¶ 216 at 8-10 (finding that the agency reasonably rated the awardee's past performance proposal as "outstanding" based on a single past performance reference).

Price Evaluation

SaxmanOne also alleges that the agency failed to reject the awardee's price proposal for containing unbalanced pricing.

The RFP provided that proposals would be subject to a price reasonableness analysis and, in order to be considered for award, each proposed price had to be determined fair and reasonable. AR, Tab 9, Amendment 0004 at 4. The RFP stated that each offeror's total evaluated price would include fixed prices for the following courses: all Level I training courses; the two lowest priced Level II training courses; the three lowest priced Level III training courses; All Driver Improvement courses; the Motorcycle Safety Foundation Dirt Bike School course; the Specialty Vehicle Institute of America All-Terrain Vehicle course; and the Recreational Off-Highway Vehicle Training course. Id.

Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. Federal Acquisition Regulation (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 in order 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. American Access, Inc., B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 5. Thus, to prevail on an allegation of unbalanced pricing, a protester must first show that one or more prices are significantly overstated since the risk in a price being overstated is that the Government will not receive the benefit of its bargain and will unjustly enrich the contractor. InfoZen, Inc., B-411530, B-411530.2, Aug. 12, 2015, 2015 CPD ¶ 270 at 7.

SaxmanOne has not alleged that any of the awardee's prices are materially overstated; rather it alleges that certain of the awardees' prices are comparatively low in relation to its own proposed pricing, and that the awardee's contract line item number (CLIN) prices are lower than might be expected, while other CLIN prices are higher than might be expected. To the extent that the protester alleges that the awardee's CLIN price for the Motorcycle Safety Foundation Basic Rider Course 2 is overstated, we note that any overstatement is insignificant because it accounts for a little more than 1 percent of the entire value of the contract. AR, Tab 19, Post-Negotiation Business Clearance Memorandum at unnumbered page 9. Indeed, ISCI submitted a final unit price of \$[deleted] against an internal government estimated cost (IGE) of \$[deleted]. AR, Tab 17, Price Analysis at numbered pages 1, 15.

The protester also argues that the awardee submitted prices that were not "fair" because they were unrealistically low. Although an agency is required to determine that offered prices are fair and reasonable before awarding a fixed-price contract, FAR § 15.402(a), the purpose of a price reasonableness evaluation in a fixed-price environment is to determine whether prices are too high, as opposed to too low. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Determining whether an offeror's prices are unrealistically low involves a price realism evaluation, which agencies are not required to conduct unless expressly provided for in the solicitation. DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 10. The record shows that the contracting officer determined that the awardee's price was reasonable--that is, not too high--based on adequate competition, see AR, Tab 19, Post-Negotiation Business Clearance Memorandum at unnumbered page 9, and SaxmanOne's protest that the awardee's price is too low provides no basis to question the conclusion because the RFP did not provide for a price realism evaluation.

Responsibility Determination

Finally, the protester argues that the agency unreasonably determined that ISCI was a responsible offeror. The protester contends that the contracting officer ignored the awardee's alleged debts and pending bankruptcy litigation.

As a general matter, our Office does not review affirmative determinations of responsibility by a contracting officer. 4 C.F.R. § 21.5(c) (2017); FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308 at 7. We will, however, review a challenge to an agency's affirmative responsibility determination where the protester presents specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. 4 C.F.R. § 21.5(c); Southwestern Bell Tel. Co., B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 8.

The record demonstrates that the contracting officer considered the awardee's alleged debts and pending bankruptcy litigation. AR, Tab 19, Post-Negotiation Business Clearance Memorandum at unnumbered page 12-13. Indeed, that document shows that the contracting officer specifically found that the awardee "has adequate financial resources to perform the contract, or the ability to obtain them" and specifically mentions that an involuntary bankruptcy notice was provided to the government. Id. Further, the agency inquired with the awardee's current clients, and determined that neither its debts nor pending bankruptcy litigation had an impact on its contract performance. Id. Lastly, the agency checked the Federal Awardee Performance and Integrity Information System, and identified no information indicating that the awardee had a history of failing to pay its subcontractors. Contracting Officer's Supplemental Statement of Facts at 5. Given this level of detail, we do not find that the agency ignored either the awardee's alleged debts or any pending bankruptcy litigation. Cf. CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 26.

The protest is denied.

Susan A. Poling
General Counsel