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Decision

Matter of: CIMA JV; G-W Management Services, LLC; Tidewater-PEM JV LLC

File: B-422813; B-422813.2; B-422813.3

Date: October 28, 2024

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Ann L. Giddings, Esq., Department of the Navy, for the agency.
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DIGEST

1. Protests asserting that awardees should have been rejected based on low prices are dismissed where the solicitation did not require a price realism evaluation.
 2. Protest challenging the evaluation of protester's past performance is denied where it was reasonable and consistent with the terms of the solicitation.
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DECISION

CIMA JV, of Leesburg, Virginia; G-W Management Services, LLC, of Rockville, Maryland; and Tidewater-PEM JV LLC, of Elkridge, Maryland, protest the award of contracts to CER, Inc., of Severna Park, Maryland; CJW Contractors, Inc., of Herndon, Virginia; Edifice Services JV, LLC, of Gaithersburg, Maryland; Encon Desbuild JV 3 LLC, of Hyattsville, Maryland; Evcon-CWC JV LLC, of Washington, DC; Fastbreak General Contractors LLC, of Hampton, Virginia; Ocean Construction Services Inc., of Virginia Beach, Virginia; and Ritz Construction Inc., of Frederick, Maryland, under request for proposals (RFP) No. N4008023R0022, issued by the Department of the Navy, Naval Facilities Engineering Systems Command (NAVFAC), for construction services within the NAVFAC Washington area of responsibility. The protesters contend that the agency unreasonably evaluated proposals and conducted a flawed source selection decision.

We deny the protests.

BACKGROUND

On October 5, 2023, the Navy issued the RFP as a small business set-aside, using the procedures of Federal Acquisition Regulation part 15. Agency Report (AR) Tab 1, RFP at 1, 4.¹ The agency sought proposals for construction services in the NAVFAC Washington area of responsibility, which includes military installations in Maryland; Washington, D.C.; and Virginia. AR, Tab 2, RFP amends. at 214.

The solicitation contemplated award of “approximately eight (8)” fixed-price indefinite-delivery, indefinite-quantity contracts with a 2-year base and two 3-year options. *Id.* at 196. The total estimated construction cost for all contracts is not to exceed \$750 million. *Id.* The solicitation established that award would be made on a best-value tradeoff basis considering price and the following five non-price evaluation factors: (1) technical approach; (2) experience; (3) project specific requirements; (4) safety; and (5) past performance. *Id.* at 197-98. Technical approach would be evaluated only on an acceptable or unacceptable basis. *Id.* at 198. The experience, project specific requirements, and safety evaluation factors were of equal importance to each other and, when combined, were of equal importance to the past performance factor.² *Id.* All non-price factors were “approximately equal to price.” *Id.* With respect to price, the RFP advised that the “importance of price will increase if the Offerors’ non-cost/price proposals are considered essentially equal in terms of overall quality, or if price is so high as to significantly diminish the value of a non-cost/price proposal’s superiority to the Government.” *Id.*

For project specific requirements and price, the solicitation provided a “demonstration project,” which described renovating and modernizing the building entrance, common areas, and patient relations suite at the Walter Reed National military Medical Center. *Id.* at 197, 199. Offerors were required to set forth their approach to complete the demonstration project in the non-price proposal. *Id.* at 206. The price proposal was limited to a total price for the demonstration project, administrative information, and a bid bond. *Id.* at 199-200; see CIMA AR, Tab 8, CIMA Price Proposal Form.

The agency received 26 proposals by the solicitation’s January 8, 2024, deadline. Contracting Officer’s Statement at 3. The Navy summarized the evaluation of the protesters’ proposals as follows:

¹ The protests were developed separately. Citations are to the record filed in B-422813.3, *Tidewater-PEM JV LLC*, except where otherwise noted, and refer to the documents’ Adobe PDF pagination.

² The technical evaluation factors would be assigned one of the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. CIMA AR, Tab 3, Source Selection Plan at 20-21. Past performance would be assessed using the following performance confidence ratings: substantial confidence, satisfactory confidence, neutral confidence limited confidence, or no confidence. *Id.* at 23.

	CIMA	G-W	Tidewater
TECHNICAL	GOOD	GOOD	GOOD
Technical approach	Acceptable	Acceptable	Acceptable
Experience	Outstanding	Outstanding	Good
Project specific requirements	Acceptable	Acceptable	Acceptable
Safety	Outstanding	Outstanding	Outstanding
PAST PERFORMANCE	SATISFACTORY CONFIDENCE	SUBSTANTIAL CONFIDENCE	SUBSTANTIAL CONFIDENCE
PRICE	\$12,034,934	\$12,394,934	\$11,945,187

AR, Tab 6, Source Selection Decision Document (SSDD) at 2; CIMA AR, Tab 6, SSDD at 2; G-W AR, Tab 6, SSDD at 2.

The source selection authority (SSA) identified the top eight ranked offerors, with overall technical ratings of good or outstanding, and prices ranging from \$9,084,934 to \$10,985,561, as (1) Fastbreak General Contractors LLC; (2) CJW Contractors, Inc.; (3) CER, Inc.; (4) Ritz Construction Inc.; (5) Ocean Construction Services Inc.; (6) Evcon-CWC JV LLC; (7) Encon Desbuild JV 3 LLC; and (8) Edifice Services JV, LLC. AR, Tab 6, SSDD at 1-2. The SSA ranked CIMA, G-W, and Tidewater as 16th, 11th, and 10th, respectively, in line for award. *Id.* at 2; CIMA AR, Tab 6, SSDD at 2; G-W AR, Tab 6, SSDD at 2.

On July 31, the Navy awarded the contracts to the top eight ranked offerors. CIMA Req. for Dismissal at 2; AR, Tab 6, SSDD at 3. On the same day, the Navy notified the unsuccessful offerors. CIMA Req. for Dismissal at 2. These protests followed.³

DISCUSSION

CIMA, G-W, and Tidewater all challenge the awards on the same basis, arguing that the agency should have rejected the awardees' proposals as "unreasonably low" priced. In addition, CIMA alone asserts that the agency should have evaluated its past performance more favorably. We have considered all of the protesters' arguments and find that none provides a basis on which to sustain the protest.

Price

The protesters focus on the agency's price evaluation, arguing that the awardees submitted prices that were unrealistically low as compared to the independent

³ We note that all three protesters are represented by the same counsel and law firm. Except as noted below, the protesters raise substantially the same challenges and arguments.

government cost estimate (IGCE).⁴ CIMA Comments at 1-3; G-W Comments at 1-4; Tidewater Comments at 1-4. The protesters contend that the Navy should have rejected any “unreasonably low underbidders” that submitted proposed prices “substantially below” the IGCE. See, e.g., G-W Comments at 2-3. The agency responds that the protesters’ argument is that the agency failed to perform a price realism evaluation, but such an evaluation was not permitted in this competition for fixed-price contracts, because the solicitation did not provide for it. MOL at 3-5. We agree.

As an initial matter, the protesters’ argument--that the agency failed to reject any offeror’s price that was “unreasonably low”--conflates the concepts of reasonableness and realism. Our Office has explained that price reasonableness and price realism are distinct concepts. *Logistics 2020, Inc.*, B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7. The purpose of a price reasonableness review is to determine whether the prices offered are fair and reasonable, i.e., not too high. See FAR 15.404-1(b); *Sterling Servs., Inc.*, B-291625, B 291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. In contrast, a price realism review is to determine whether prices are too low, such that there may be a risk of poor performance. See FAR 15.404 1(d); *C.L. Price & Assocs., Inc.*, B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3. As such, the protesters’ challenge here--that the awardees underbid the demonstration project that formed the basis of the price evaluation--essentially raises a challenge to the realism of the awardees’ prices. *C.L. Price & Assocs., Inc., supra* (“Arguments that an agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism.”)

Next, while an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror’s low price reflects a lack of technical understanding or risk, see FAR 15.404-1(d)(3), offerors must be

⁴ Initially, the protesters also argued that the agency improperly relied on proposed prices to make the award decision when, in the protesters’ view, proposed prices were limited to the price of the demonstration project “that had an unrealistic chance of being awarded.” See, e.g., G-W Protest at 2. The agency responded that any challenge to the use of a demonstration project for the price proposal and the criteria for the award decision was an untimely challenge to the terms of the solicitation. See, e.g., G-W Memorandum of Law (MOL) at 3. The protesters subsequently stated that they were not advancing any challenge to the agency’s reliance on the demonstration project specifically or price generally in the award decision separate from the price realism argument. See, e.g., G-W Comments at 3-4 (representing that the agency’s timeliness argument “misconstrue[d] the basis of” protest and the challenge was limited to the “failure to reject unreasonably low bids based on the express language of the Solicitation”). In essence, the protesters allege the RFP required the agency to conduct a price realism assessment. As discussed more fully below, we conclude the RFP did not require the agency to conduct a price realism assessment. Consequently, we need not address the agency’s timeliness argument as we take the protesters’ clarification to be a withdrawal of any such challenge to the terms of the solicitation.

advised that the agency will conduct such an analysis. *CACI-WGI, Inc.*, B-408520.2, Dec. 16, 2013, 2013 CPD ¶ 293 at 7. Because below-cost prices are not inherently improper in a fixed-price context, an offeror competing for award of a fixed-price contract must be given reasonable notice that its business decision to submit a low-priced proposal will be viewed negatively by the government in assessing the risk associated with its proposal. *Triad Int'l Maint. Corp.*, B-408374, Sep. 5, 2013, 2013 CPD ¶ 208 at 11. In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the RFP expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and where the RFP states that a proposal can be rejected for offering low prices. *DynCorp Int'l LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision notifying offerors that a price realism analysis would be conducted, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. *CACI-WGI, Inc.*, *supra*.

As discussed above, the solicitation defined the “demonstration project” as a “design-bid-build requirement and [r]enovation project” to modernize an entrance, common areas, and patient relations suite of a military medical center. AR, Tab 2, RFP amends. at 196-97. The RFP advised that the demonstration project was for evaluation purposes and would not necessarily be awarded as an initial order with the fixed-price contract awards.⁵ *Id.* at 197. The proposed price for evaluation was limited to a total price for the demonstration project. *Id.*; see CIMA AR, Tab 8, CIMA Price Proposal Form. The Navy would evaluate offerors’ prices by comparing them to other proposed prices, the IGCE, historical information, and market survey results “to ensure a fair and reasonable price.” AR, Tab 2, RFP amends. at 201.

According to the protesters, this meant that the solicitation provided for a price realism analysis, and the RFP required the agency to reject offerors that submitted proposals at prices significantly less than the IGCE. See, e.g., Tidewater Comments at 1-2. That is, the protesters assert that if a solicitation provides for pricing only by reference to “a ‘Demonstration Project’ that will not be awarded,” and states that proposed prices will be compared to the IGCE, that puts offerors “on notice that a [proposal] could be rejected if it is unrealistically high or low.” *Id.* at 1-3.

⁵ Specifically, the RFP advised:

This project was selected as the demonstration project from existing requirements to best represent the nature of potential work under the contract. The Government reserves the right to award the demonstration project at the time of the basic contract award or before the proposal expiration period, should funds become available. If the demonstration project is not awarded with the basic award, the guaranteed minimum will be awarded.

AR, Tab 2, RFP amends. at 197.

We disagree. Here, the solicitation contained neither an express price realism provision nor any statement that the agency would review prices to determine whether they are so low as to reflect a lack of technical understanding. Instead, the solicitation stated that the agency would compare offerors' prices to other measures, including the IGCE, to evaluate for reasonableness. AR, Tab 2, RFP amends. at 201. As such, we conclude that the RFP did not require the agency to evaluate the realism of proposed prices, and thus find no merit to the protesters' argument that the agency failed to assess whether the awardees' proposed prices were unrealistically low. See *Systems Plus, Inc.*, B-415559, B-415559.2, Jan. 12, 2018, 2018 CPD ¶ 27 at 7. The mere fact that the solicitation required pricing based on a sample task order--the demonstration project--does not, by itself, transform a solicitation's provision for a reasonableness evaluation into a realism requirement. See *Planned Sys. Int'l, Inc.*, B-405292.3, July 10, 2012, 2012 CPD ¶ 203 at 6 n.9 (finding no price realism requirement where solicitation required pricing based, in part, on sample task orders).

As a result, the protesters have failed to make the threshold showing required to prevail on this argument, namely, that the solicitation required a price realism analysis. Accordingly, we dismiss this ground for failure to state a valid basis of protest. *U.S. Facilities, Inc.*, B-418229, B-418229.2, Jan. 30, 2020, 2020 CPD ¶ 65 at 4-5; 4 C.F.R. §§ 21.1(c)(4), (f).

Past Performance

The protester, CIMA, also challenges the agency's evaluation of the firm's proposal under the past performance factor, contending that the Navy should have evaluated CIMA's proposal more favorably. CIMA Comments at 3-5. According to CIMA, the agency was obligated to assign the firm a performance confidence rating of "substantial confidence" based on the past performance references submitted in CIMA's proposal. *Id.* The agency responds that--consistent with the solicitation--the past performance evaluation was based not only on the past performance references submitted with the proposal but also evaluations from the Contractor Performance Assessment Reporting System (CPARS). CIMA MOL at 6-7.

An agency's evaluation of past performance, which includes its consideration of the significance of an offeror's performance history, is a matter of discretion, which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Teya Enters., LLC*, B-420907, Oct. 24, 2022, 2022 CPD ¶ 266 at 3-4. When a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria as well as applicable procurement statutes and regulations. *Id.* at 4; *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 6. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation findings. *Intercontinental Constr. Contracting, Inc.*, B-415040 *et al.*, Nov. 8, 2017, 2018 CPD ¶ 82 at 7. A protester's disagreement with the agency's judgment does not establish that an

evaluation was unreasonable. *APC Constr., LLC*, B-419771, July 13, 2021, 2021 CPD ¶ 258 at 6.

The solicitation here provided that offerors could submit up to five projects for the prime contractor and up to five projects for the designer of record to be evaluated for experience and past performance. AR, Tab 2, RFP amends. at 202-06, 210. The evaluation, however, would be based not only on the projects submitted but also “past performance on other projects currently documented in known sources.” *Id.* at 210. Assessing CIMA, the evaluators noted that the past performance references CIMA submitted showed “overall Satisfactory or better performance . . . with a majority of ratings being Exceptional,” and for CIMA’s designer of record, showed “overall Very Good and Exceptional performance.” CIMA AR, Tab 4, Source Selection Evaluation Board Report (SSEB) at 13. The evaluators concluded that there was a “trend of average performance” based on that information and additional CPARS assessments showing negative ratings “for work similar to anticipated work” here. *Id.*

CIMA does not deny that the agency was permitted to consider CPARS ratings for submitted projects and additional past performance, nor does it deny that the CPARS ratings the agency found for CIMA included some marginal and unsatisfactory ratings. CIMA Comments at 4. Instead, the protester argues that the Navy should have rated CIMA higher because CIMA’s performance history shows many more positive ratings than marginal or unsatisfactory assessments, and “the CPARS data is simply ‘less relevant’” than the projects submitted in the proposal. *Id.* The contemporaneous record, however, reflects the evaluators, themselves, identified the negative ratings “account[ed] for 6 [percent] of [CIMA’s] total elemental ratings,” and ultimately concluded:

Considering the recency, and relevance of the information, the source of the information, the context of the data, and general trends in the Offeror’s recent/relevant performance record, the Government has reasonable expectation that the Offeror will successfully perform the required effort. Based upon the above, the Performance Confidence Assessment is SATISFACTORY CONFIDENCE.

CIMA AR, Tab 4, SSEB at 14.

In other words, CIMA disagrees with the past performance evaluation based on the protester’s own judgment about the weight that should be assigned to poor performance reviews and relevance of past work to the current solicitation. While the protester takes issue with the agency’s conclusion, this disagreement with the agency’s evaluation judgments, without more, does not demonstrate that those judgments were unreasonable or otherwise provide a basis on which to sustain the protest. *Computer Scis. Corp.*, B-409386.2, B-409386.3, Jan. 8, 2015, 2015 CPD ¶ 34 at 4.

The protests are denied.

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General Counsel