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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: ManTech Security Technologies Corporation

File: B-297133.3

Date: April 24, 2006

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Dennis J. Gallagher, Esq., Department of State, for the agency.
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DIGEST

1. Protester was not prejudiced by the fact that another unsuccessful offeror was permitted to have more than 10 persons attend the oral presentation, which was assertedly in violation of the terms of the solicitation, where the awardee had only 10 persons attend the oral presentation.

2. Agency was not required to discuss relative weaknesses in the protester's highly rated proposal that materialized as a result of oral presentations based on a comparative evaluation of the proposals by the agency, finding that the awardee's proposal had a superior technical approach.

3. Protest against evaluation and source selection is denied where the record evidences that the procuring agency reasonably evaluated proposals consistent with the RFP's evaluation criteria.

DECISION

ManTech Security Technologies Corporation protests the award of a contract to Siemens Government Services, Inc. under request for proposals (RFP) No. S-AQMPD05-R-1002, issued by the United States Department of State (DOS), for engineering and technical support services.

We deny the protest.

DOS installs and maintains security equipment at its facilities worldwide to protect its personnel and the United States' critical national security information from terrorism, mob violence, and technical threats. The RFP, issued May 6, 2005, solicited proposals to provide engineering and technical support for this function under a combined fixed-price and time-and-materials contract for a base year with 3 option years. Because the contractor was required to use service employees to perform the work, the RFP required compliance with the Service Contract Act of 1965 (SCA) and included the appropriate wage determination.

The RFP provided for award on a "best-value" basis with the following evaluation factors listed in descending order of importance:

Factor 1 - Technical/Management Solution/Approach

Factor 2 - Performance Measurement and Management Program

Factor 3 - Past Performance

Factor 4 - Subcontracting and Socio-Economic Business Participation

Factor 5 - Price.

With respect to Factor 1, the RFP indicated that the proposals would be evaluated for quality and evidence of the extent to which the offeror's solution will achieve the program's desired outcomes, and would include assessments of the approach to performing and managing the effort; adherence to sound engineering, design and management practices; and relevance to the program objectives, environment, and constraints. Several examples were listed in the factor as to what was desired, such as a "comprehensive performance work statement and work breakdown structure that addresses the services to be delivered to meet the program and mission requirements set forth in the statement of objectives," a "sound technical proposal that clearly demonstrates how implementation of the proposed solutions will deliver timely, reliable, responsive, compliant and cost effective services to meet the needs of the program stakeholders," a "[p]rocess that reflect[s] current industry best practices," and "[a]ctive and continuing participation and involvement of senior corporate executives in ensuring success of the program." RFP § M.4.

The RFP advised that the agency's evaluation ratings would focus on the strengths and weaknesses of the offeror's technical and management capability and the solution as demonstrated by the written proposal and oral presentation. RFP § M.5. In this connection, section L.18 of the RFP advised that oral presentations/ discussions would be conducted with all offerors whose proposals had been determined to be in the competitive range, and that the sessions would comply with Federal Acquisition Regulation § 15.306(d). Section L.18 explained that the sessions would take an estimated 4 hours, during which the offeror would be allowed to describe its proposed solution/approach and pricing structure and to address certain subjects identified in the instructions, to help the government better understand the proposal. In this regard, offerors were informed that government participants could ask questions throughout the presentation. The section further explained that it was required that individuals presenting be those identified as key personnel and/or senior management, and that it was important that the individuals responsible for performance of the services present the oral presentation. This section also advised that, due to limited space, only 10 people were allowed to attend the presentation.

The RFP stated that the price evaluation would involve evaluation of proposed price/cost, price reasonableness, and price risk. The RFP stated that reasonableness would be established by the existence of adequate price competition and comparison to factors such as market pricing and similar work, and that the price risk evaluation would consider "the risk associated with pricing schemes." RFP § M.4.

Seven offerors submitted proposals in response to the RFP by the June 20 closing date. A seven-member technical evaluation panel (TEP) rated the proposals under only Factors 1 and 2 utilizing a qualitative adjectival rating scale.[1] Included in the competitive range were the proposals of ManTech, the incumbent for most of the services, whose proposal received an overall rating of excellent/technically acceptable and was priced at $106,711,811; Computer Sciences Corporation (CSC), whose proposal received an overall rating of excellent/technically acceptable and was priced at $91,376,298; and Siemens, whose proposal received an overall rating of good/technically unacceptable, but capable of being made acceptable through discussions, and was priced at $98,694,732.

Following oral presentations, the TEP received final proposal revisions. Based upon the oral presentations and proposal revisions, which included no price changes, the TEP revised the ratings of the three proposals. Siemens's proposal was rated highest with an overall rating of excellent/acceptable, while ManTech's and CSC's proposals both were downgraded to an overall rating of good/technically acceptable.

The TEP found Siemens's revised proposal warranted the highest rating because during the oral presentation it augmented its written proposal by demonstrating its depth of understanding of the technical requirements, it had senior corporate executives actively involved, and it clarified questions that the TEP had about the innovative approaches in the proposal. The TEP found that Siemens validated its ability to make the best use of industry practices and substantiated the level of detailed knowledge and modernization needed to manage the multifaceted global effort. The TEP concluded that Siemens had a convincing and actionable plan to globally implement all the required services, and the leadership to bring enterprise-wide processes together to improve asset visibility and program management. The

[1] The adjectival ratings were excellent, good, fair, poor, and unsatisfactory.

TEP further found that Siemens's management team presented a cohesive approach with many value-added methodologies to lower the cost of ownership and improve delivery systems. The TEP noted that all significant technical and management challenges, including life cycle management and operator training, were clearly identified, and that Siemens had designed effective risk mitigation tools and strategies for dealing with supply chain data recovery and contract transition. Thus, the TEP concluded that Siemens's proposal offered the best overall technical solution to achieve the program's objectives and desired outcomes. Agency Report, Tab 59, TEP Memorandum, at 2.

By comparison, the TEP rated ManTech's proposal good based on the firm's experience with the work and its clear understanding of what is needed to accomplish the task. For example, the TEP found that, as the incumbent for many of the services in the predecessor contract, the chance of a seamless transition was substantially higher, and that its proposal indicated a clear understanding of the operations to be covered by the contract, industry best practices and a defined quality control practice. However, the TEP downgraded the rating for ManTech's revised proposal following the oral presentation to good primarily because "the proposal failed to demonstrate the opportunities for service improvement available in the proposal rated excellent."[2] The TEP also found that the proposal as explained during the oral presentation "did not as aggressively identify and apply enterprise-wide services that clearly address the global asset management challenges."[3] Id.

In view of Siemens's superior technical proposal and reasonable price, the source selection official determined Siemens's proposal represented the best value, after conducting a price/technical trade analysis between the proposals. In so doing, the source selection official determined that no detailed price/technical consideration of ManTech's high-priced proposal vis-à-vis Siemens's proposal was warranted because ManTech's proposal was only slightly technically better than CSC's, which was viewed as having an advantage because of its much lower price, and therefore

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[2] The evaluation documents reflect that an excellent rating was to be assigned by the TEP if, for example, the offeror's "proposed solution is clearly explained and offers value-added methodologies for improving service that benefits the government," whereas a good rating was warranted if, for example, the offeror's "proposed solution might be effective but fail[s] to offer the opportunities for service improvement available in a proposal rated excellent." Agency Report, Tab 59, TEP Memorandum, attach. 1.

[3] CSC's proposal was downgraded because "the proposal lacked the expected level of compelling evidence within both the Technical Security Project Management and Engineering Program, and the Test Evaluation Program to meet the standards of an excellent rating." Agency Report, Tab 59, TEP Memorandum, at 3.

focused on the differences between CSC's and Siemens's proposals. As between these two proposals, the source selection official found Siemens's proposal to be "a well thought-out and applied technical and management approach to the Department's critical worldwide security enhancements program that is substantially more innovative and promising than that offered by CSC," and that this justified the agency paying the associated higher price. Agency Report, Tab 60, Cost-Technical Tradeoff and Award Determination, at 4-5.

DOS awarded the contract to Siemens on August 29. However, a protest filed by ManTech led DOS to take corrective action, after it realized that the agency's evaluation failed to include Factors 3 and 4. As part of the corrective action, the TEP rated the three proposals excellent for Factor 3. For Factor 4, CSC's proposal received an excellent rating, while both Siemens's and ManTech's proposals received good ratings.

A new price/technical tradeoff decision was made that mirrored in many respects the previous rationale for why Siemens's proposal represented the best value as between the Siemens and CSC proposals. This second decision also included a specific discussion as to why ManTech's proposal was not selected. While recognizing and discussing the strengths of ManTech's proposal, the decision found that "ManTech's proposal failed to demonstrate the opportunities for service improvement available in Siemens's proposal, and did not as aggressively identify and apply enterprise-wide services that clearly address the global asset management challenges," and that its proposal rating had been lowered to good because of the absence of "innovative or comprehensive approaches" in its oral presentation. Agency Report, Tab 66, Revised Cost-Technical Tradeoff and Award Determination, at 5-6. DOS affirmed the award to Siemens on January 11, 2006. This protest followed.[4]

ManTech challenges the fairness of the oral presentation, given that the agency relaxed for CSC the 10-person limitation on those who could attend the oral presentation. ManTech argues that had it been permitted to bring more than 10 persons to its oral presentation it could have addressed the agency's concerns with regard to service improvements and how it would address global asset management and demonstrated the commitment of its senior executive personnel to this contract.[5]

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[4] We focus only on the issues discussed below, since the other arguments raised in ManTech's initial protest were not addressed in its comments on the agency report and therefore are deemed to be abandoned.

[5] ManTech has not pursued its other complaints about the conduct of the oral presentation.

The record here reflects that in response to a request made by CSC, DOS permitted CSC to rotate presenters into the room, which resulted in it utilizing more than 10 persons to make its oral presentation (although only 10 were in the room at any one time). See Agency Report at 5, 40. However, the awardee, Siemens, like ManTech, only had 10 persons participate in the oral presentation. Id. at 5. Since CSC was not selected for award, the fact that CSC had more than 10 persons participate in the oral presentation was not prejudicial to ManTech and therefore does not provide a basis to sustain the protest.[6] See Interactive Data Corp., B-188964, Nov. 23, 1977, 77-2 CPD ¶ 397 at 6; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 103 F.3d 1577, 1581 (Fed Cir. 1996).

ManTech next contends that it was improper for DOS not to have made ManTech aware, during or subsequent to the oral presentation, of the perceived weaknesses in its proposal that caused it to be rated good rather than excellent.

Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. In this regard, we review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. An agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives lower than the maximum score, and is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. American Ordnance, LLC, B-292847 et al., Dec. 5, 2004, 2004 CPD ¶ 3 at 4-5.

Here, the weaknesses found by the agency resulted from the oral presentations of Siemens and ManTech, which, in the agency's view, after reevaluating the proposals considering the initial proposals, oral presentations and final proposal revisions, demonstrated that Siemens had a superior technical approach. The reason that ManTech's proposal ultimately was rated good and Siemens's was rated excellent

[6] In any case, we think that the agency's decision to allow CSC to utilize a rotation of personnel to make its oral presentation was not a basis to question the fairness of the oral presentation process. The RFP did not specifically restrict offerors to 10 persons, but merely put offerors on notice that only 10 persons could be accommodated in the room due to the space limitations. Although ManTech is complaining here that it was treated unequally because of the accommodation that the agency made for CSC, ManTech does not claim that at the time it made its presentation the agency precluded it from allowing more than 10 persons to participate. There is also no reason to believe that had ManTech made a similar request as CSC the agency would not have accommodated ManTech.

was not because ManTech's proposal was deficient (in fact it was rated highly), but rather that Siemens's proposal, as amplified by the oral presentation, contained a number of strengths that warranted its superior rating that were not present in ManTech's proposal, as amplified by the oral presentation. Thus, the agency had no duty to conduct discussions on a point that became apparent after the proposals were comparatively evaluated and Siemens' was found superior on this point to ManTech's. Id.

Next, ManTech raises a multiplicity of arguments challenging the agency's conclusion that ManTech's proposal warranted only a good rating because it failed to optimally demonstrate the opportunities for service improvements (as compared to Siemens) and did not aggressively identify and apply enterprise-wide services that clearly address the global asset management challenges.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

ManTech first argues that rating its proposal based on a comparison to Siemens's proposal as to whether it demonstrated optimum opportunities for service improvements and aggressively identified enterprise-wide services addressing global asset management challenges were unstated evaluation factors. This argument is meritless.

We first note that section C.4.2 of the statement of objectives in the RFP specifically advises that "the goal [at the various sites] is to lower the cost to the government and or provide improved services." In addition, the evaluation criteria specifically indicated that credit would be given to a proposal that reflected current industry best practices. RFP § M.4. Thus, ManTech was specifically put on notice that the agency sought to improve the current services and that proposals that demonstrated how this could be done would be credited for such innovations.

Moreover, an agency may properly rate one proposal higher than another for exceeding the RFP requirements where the RFP seeks detailed technical proposals and sets forth weighted evaluation criteria to enable the agency to make comparative judgments about the relative merits of competing proposals. Under these circumstances, an offeror is on notice that the agency will make qualitative distinctions between proposals under the various evaluation factors. In making such distinctions, the agency may properly consider specific matters, albeit not expressly identified, that logically relate to the stated evaluation criteria. See RAI, Inc.; The Endmark Corp., B-250663, et al., Feb 16, 1993, 93-1 CPD ¶ 140 at 6.

Here, as discussed above, the agency found that Siemens's technical proposal, as supplemented by its oral presentation, separated it from the other proposals, including ManTech's, on matters that were covered by, or logically related to, the evaluation criteria. In fact, the record indicates that because of these strengths the TEP found that Siemens solidified its proposal with a strong oral presentation whereas ManTech's oral presentation lessened the impact of its written proposal. See Agency Report, Tab 59, attach. 2, Consolidated Rating and Narrative, at 1-11. This was the reason that Siemens's proposal received an excellent rating and the other proposals only received good ratings.

For example, one evaluator stated that while his initial impression was that Siemens's written proposal was "theoretical," Siemens "came to their orals with detailed, factual information . . . with clear information of how these areas would be implemented." He found that Siemens's "innovative, comprehensive" "presentation on warehousing and logistics far exceeded that of the other two companies"; that "their proposed solution for providing lab facilities and their entire approach to technology development were fresh and innovative"; and "their presentation included senior managers that participated in the discussions." This evaluator found that ManTech, in contrast to Siemens, after the oral presentation and final proposal revisions, had not demonstrated as "thorough [an] understanding of the challenges pertaining to logistics and technology development" and had left the "impression that as the incumbent, they would continue business as usual." The evaluator also observed that "in the area of Network management their partner was not present and they did not give a convincing presentation that proved they had a plan to meet those required objectives [and that ManTech's] senior managers in attendance were notably silent." Agency Report, Tab 59, attach. 2, Consolidated Rating and Narrative, at 3-4.

While ManTech asserts that the agency's evaluation did not properly account for ManTech's excellent written technical proposal, which offered many improvements to the current services, such as [DELETED] our review of the record indicates that the agency's evaluation conclusions that Siemens's proposal warranted an excellent rating and ManTech's a good rating are supported by the record and are consistent with the RFP's evaluation scheme. It is apparent that recognizing an offeror's particular innovation and creativity under the comparative technical evaluation is inherent in any competition between competing proposals, and ManTech's belief that its proposed innovations were not properly accounted for here reflect mere disagreement that does not demonstrate that the agency's view that Siemens's proposal was the more innovative of the two highly-rated proposals was unreasonable. Moreover, given that the evaluation criteria specifically indicated that offerors would be credited for "[a]ctive and continuing participation and involvement of senior corporate executives in ensuring success of the program," RFP § M.4, the agency properly took into account the active participation by Siemens's senior personnel, in contrast to the perceived passive participation by ManTech's senior personnel, in rating the respective proposals.

ManTech also argues that DOS conducted a flawed price evaluation. ManTech maintains that more price risk should have been attached to Siemens's proposal because it was based on hiring ManTech's incumbent staff but included labor rates lower than ManTech's current salary levels, which should have raised questions as to whether Siemens would be able to attract and retain a qualified staff. In addition, ManTech argues that the price evaluation was unreasonable because the agency's evaluation did not include an "analysis of the elements of offerors' proposed prices, including for example, whether offerors were proposing rates that complied with the SCA for the correct labor categories, whether they were proposing labor rates that reflected the level of expertise and skill required by the Solicitation, whether the offerors' rates were consistent with the Independent Government Estimate, or whether an offeror who was proposing to capture and retain the incumbent staff proposed rates that reasonably could accomplished the proposed approach." Protester's Comments at 21.

Although ManTech's essential complaint is that DOS's analysis should have been more exhaustive, our review confirms that the price evaluation that was conducted by DOS was reasonable and consistent with the RFP. The record shows that in conducting the price evaluation, the agency compared offerors' prices to each other for each contract line item for the base and option years and to the government estimate ($150,000,000) for the work, considered whether the offerors' prices were unbalanced, and found that price reasonableness was established by adequate price competition that reflected approximately a 5-percent differential between the three lowest-priced proposals of CSC, Siemens, and ManTech. See Agency Report, Tab 42, Price Analysis Memorandum, at 2-6; Tab 65, Evaluation of Factor 5, at 1. This is fully consistent with what the RFP stated would be done in evaluating price reasonableness.

Also, the agency found that all three offerors followed the pricing scheme set forth in the RFP and that although there were some differences in the schemes, there were no substantial price risks associated with any of the three offerors' proposals. This is consistent with the limited price risk evaluation contemplated by the RFP. While the protester apparently believes that price realism was required to be evaluated, the RFP did not contemplate any such evaluation. Absent an RFP provision in a solicitation for a fixed-priced contract requiring a price realism analysis, no such analysis is required. Cherry Road Techs.; Elec. Data Sys. Corp., supra, at 18. Although ManTech claims that DOS should have considered whether Siemens satisfied the SCA, it has not pointed to any areas where Siemens' proposal was deficient, or where Siemens took exception to the SCA.

The protest is denied.

Anthony H. Gamboa
General Counsel