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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Foresight Science & Technology, Inc.

File: B-297910.2; B-297910.3

Date: November 30, 2006

William W. Goodrich, Jr., Esq. and Zachary J. Stewart, Esq., Arent Fox PLLC, for the protester.

David P. Metzger, Esq. and Michele Mintz Brown, Esq., Holland & Knight LLP, for Dawnbreaker, an intervenor.

Sandra M. Wozniak, Esq., National Science Foundation, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of proposals and source selection decision is denied where record shows the evaluation was reasonable and consistent with the solicitation.

DECISION

Foresight Science & Technology, Inc. protests the selection of Dawnbreaker and Development Capital Networks LLC (DCN) as the successful vendors under request for quotations (RFQ) No. DCCA-06-0006, issued by the National Science Foundation (NSF) for technical assistance in commercialization planning for Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) phase I awardees.¹ Foresight, an incumbent contractor for these services, challenges the

¹ The SBIR and STTR programs provide research and development funding awards to small businesses to undertake science/engineering research. Phase I awardees receive limited funding to test the scientific, technical and commercial merit and feasibility of a certain concept; while phase I awardees may apply for phase II funding to further develop the concept, pursuit of outside funding is also anticipated. The current RFQ provides technical assistance and training in commercialization planning for phase I awardees.

reasonableness of the evaluation of quotations and the agency's source selection decision.²

The RFQ contemplated the issuance of one or more fixed-price delivery orders for a 1-year base period and two 1-year option periods, to the firm(s) submitting the quotation(s) providing the best value to the government considering technical, past performance, and price factors. RFQ amend. 2, at 9. The technical factor was the most important, and the technical and past performance factors combined were significantly more important than price. *Id.* The technical factor was composed of two subfactors, understanding of the statement of work/technical approach (worth 85 points) and personnel (worth 15 points). The understanding of the statement of work/technical approach subfactor was further divided into the following six criteria: (1) training small companies in commercialization planning; (2) understanding of technology transfer and successful commercialization in small businesses; (3) documented assistance process meeting phase II proposal submission deadlines; (4) quality and availability of mentors (with a breadth of technological expertise, expertise to assist with required financial analysis and identifying financing opportunities, market research expertise, and experience in developing intellectual property strategies in small businesses); (5) capability to staff requirements by labor category within the maximum \$4,000 per grantee fee, with an understanding of the needs and assessment of phase I grantees; and (6) documented performance in obtaining third-party funding for small businesses. *Id.* at 7-8. Vendors were advised that, while a phase I awardee's commercialization plan would be critical to its phase II funding application, since most applicants do not receive phase II awards due to budget limitations, "[i]t is essential that training in the commercialization planning process be provided as part of the technical assistance in order for unsuccessful companies [to] have a planning platform for future endeavors." RFQ attach.1, at 1.³

² Foresight earlier protested an initial evaluation of quotations conducted by the agency; in response to that protest, the agency took corrective action by revising the solicitation and requesting revised proposals, and Foresight withdrew its protest. This protest concerns the evaluation of the revised quotations.

³ As an example of commercialization planning areas to be covered with the phase I awardees, the RFQ's statement of work incorporated an outline of a phase II commercialization plan for the firm's identification of market opportunity (including target market, growth trends, and how the firm planned to move beyond the agency's investment), company team (including capitalization and expertise), product/technology and competition (including customer needs and intellectual property issues), and a finance and revenue model (including a financial plan and plans to access required investment funds through other funding contacts, leads, relationships, and agreements).

Past performance was to be evaluated for relevance to the current requirements. Id. at 8. For the evaluation of price, vendors were to provide labor rates, direct costs such as travel, applicable general and administrative rates, and any discounts. Id. Since maximum compensation was capped at \$4,000 per phase I awardee, quotations were to show the firms' cost buildup within that budget. Id. at 9. The RFQ provided that pricing for the fixed-price effort would not be weighted or point scored, but that "resource realism and consistency to the proposed technical approach will be considered." Id.

Four quotations were received and evaluated. All four vendors' quotations were rated excellent for past performance; each of the vendors proposed to perform the work at the \$4,000 per client maximum. Dawnbreaker's and DCN's technical quotations were rated "very good" overall; the protester's and the other remaining vendor's quotations were rated "good." While Foresight's technical quotation was cited as having strengths, it was credited with fewer strengths than the Dawnbreaker and DCN quotations; additionally, while Dawnbreaker's and DCN's quotations had no significant weakness cited under the most important technical factor, understanding the statement of work/technical approach, Foresight's quotation was cited as having three significant weaknesses under the factor. Specifically, significant weaknesses were cited for the protester's failure to document its performance in obtaining third-party funding for small businesses, for not demonstrating adequate knowledge of investment resources that could help aspiring awardees, and for focusing its assistance program on securing phase II awards rather than developing a strong commercialization plan that will assist in securing investors for the phase I awardees. Additional minor strengths and weaknesses were cited for each quotation under the technical approach and personnel subfactors.

The evaluators recommended Dawnbreaker and DCN for selection based on their technically superior quotations. The SSA, after pursuing clarification from the evaluators on their findings, concurred with the technical evaluation board's comparative analysis of the proposals and its selection recommendations. The SSA selected Dawnbreaker and DCN as the two firms providing the quotations deemed to present the best value to the government. This protest followed.

Foresight challenges the evaluation of the quotations, primarily on the basis that the evaluators assessed weaknesses inconsistently among the vendors under the technical approach criterion for documented performance in obtaining third-party funding.⁴ Foresight also challenges the propriety of the price evaluation. While

⁴ In its protest, Foresight initially challenged the propriety of the weaknesses cited in its quotation at its agency debriefing, and alleged that agency personnel threatened the firm to dissuade it from protesting. In its comments, however, the protester did not respond to the merits of the agency's response to these challenges and instead raised new arguments regarding an alleged inconsistency in the evaluation of

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Foresight acknowledges that all vendors offered the same price for the work, Foresight contends that the agency failed to evaluate the prices in terms of the value offered by each vendor's particular approach. In this regard, Foresight argues that it should be credited for offering additional value by providing [deleted] and that the DCN quotation should have been regarded as offering lesser value due to [deleted].

In reviewing protests of alleged improper evaluations and source selections, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is a vendor's responsibility to submit an adequately written quotation that establishes the merits of its technical approach, see Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4, and a protester's mere disagreement with the evaluation provides no basis to question the reasonableness of the evaluators' judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

In response to the protest, the agency provided a detailed record of its evaluation and source selection decision. Based on our review of this record, supported by detailed declarations from each of the evaluators and the SSA, and Foresight's failure to persuasively refute the justifications provided by the agency for the challenged evaluation findings, we see no basis to question the reasonableness of the evaluation or the propriety of the source selection.⁵

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weaknesses assessed by the agency among the vendors' quotations. Since the protester failed to respond to the agency's report on the initial allegations, we consider them abandoned. See The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218 at 5. The protester also failed to comment on the agency's response to its supplemental protest ground alleging use of an unstated evaluation criterion [deleted]; the allegation is similarly deemed abandoned. Id.

⁵In its supplemental comments, Foresight suggests that, despite a detailed consensus evaluation report in the record identifying the quotations' strengths and weaknesses, the evaluation should be considered deficient since, although some evaluation worksheets show point score changes reflecting evaluation changes, it remains unclear whether the firms' overall point scores were changed after the consensus review to reflect any adjustments to an individual evaluator's evaluation worksheets. We see no reason to question the source selection on this basis, however, since point scores are merely guides to agency decisionmaking and do not mandate automatic selection of a particular proposal. Rather, the propriety of a comparative evaluation and source selection turns on the reasonableness of the evaluation findings regarding the differences in technical merit and what the differences mean in terms of performance of the required work, despite point scores and adjectival ratings assigned. See Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136 at 10.

Foresight contends that weaknesses were assessed inconsistently among the vendors' quotations.⁶ In its comments in response to the agency's supplemental report, Foresight narrows this challenge to one area, the requirement for documented performance in obtaining third-party funding for small businesses. In this regard, Foresight alleges that its quotation was unfairly assessed a significant weakness [deleted] while Dawnbreaker's quotation, which the protester believes [deleted] was only assessed a minor weakness under the same criterion.

Our review of the record supports the reasonableness of the agency's evaluation of both firms' quotations in this area. For example, we recognize that the protester's quotation states that [deleted]. As the agency points out, however, that statement does not indicate that the claimed commercial success specifically relates to obtaining funding from other sources. Additionally, while Foresight contends that the Dawnbreaker quotation fails to provide any documented performance in obtaining third-party funding for small businesses, the agency reports, and our review of the quotation confirms, that the quotation in fact includes some relevant documentation regarding, for example, [deleted]; the information is included in the firm's past performance quotation, while similar [deleted] are referenced in the firm's key personnel resumes. Since the agency has reasonably explained the basis for assessing a significant weakness for Foresight's quotation [deleted] and a minor weakness for Dawnbreaker [deleted], the record provides no basis to conclude that these challenged evaluation ratings were inconsistent or otherwise unreasonable.⁷

Foresight next argues that the agency failed to perform an adequate price evaluation of the quotations. The protester contends that although all four vendors quoted the same price for the work (at the maximum of \$4,000 per phase I awardee), the agency should have considered the value of the services it would receive from each firm's

⁶ In its supplemental protest, for instance, Foresight generally contends that the DCN quotation should be assessed a significant weakness to reflect one evaluator's initial concern about the firm's understanding of the work. In the supplemental agency report, however, the evaluator explained that after the consensus evaluation, she no longer questioned DCN's understanding of the work, since it became clear to her that [deleted]. The protester provides no further support to question the reasonableness of the evaluator's determination. On this record we have no basis to question the evaluation.

⁷ For the first time in its supplemental comments, the protester also alleges that it was unreasonable to credit DCN with [deleted]. As an initial matter, we note that the protest allegation is untimely, as the protester was provided the DCN quotation and full evaluation record more than 10 days before it lodged this additional allegation. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2006). In any event, the record supports the reasonableness of the favorable evaluation [deleted].

different approach. Specifically, Foresight contends that it should be credited for providing additional value by offering [deleted]; similarly, the protester questions the value of DCN's quotation due to that firm's [deleted].

The agency points out that the RFQ here did not contemplate a more detailed price realism analysis than was conducted for this fixed-price procurement. Rather, as stated above, the RFQ required that quotations be reviewed for compliance with the \$4,000 budget cap announced in the RFQ, as well as for "resource realism and consistency to the proposed technical approach . . ." RFP at 9. The agency reports that the prices were reviewed for completeness and accuracy for labor rates, as well as for the proposed level of effort, and that each firm's price buildup was considered realistic in that each included appropriate labor rates and skill mix, and reflected the vendor's technical approach, as well as some vendor discounts.

Our review of the RFQ's price evaluation terms, the vendors' quotations, and the price evaluation summary provides no basis to conclude that the evaluation was flawed. The agency reviewed each vendor's price build-up using the price realism factors contained in the RFQ, and confirmed consistency with the vendors' proposed approaches, as called for by the RFQ. While Foresight suggests that the evaluation was flawed because it failed to consider the underlying value offered by the equally-priced quotations, the record does not support this position. On the contrary, the record shows that, as part of the technical evaluation, the agency considered Foresight's [deleted] and identified it as a weakness--not as added value--in the firm's approach. Similarly, with respect to DCN, the agency recognized that DCN's highly-rated technical approach involved [deleted], the cost of which was reflected in [deleted].⁸

The protest is denied.

Gary L. Kepplinger
General Counsel

⁸ Foresight also challenges the sufficiency of the SSA's source selection decision, arguing that the SSA's concurrence with the technical evaluation board's recommendation for award is insufficient to show an independent assessment of the merits of the quotations. Given the detail of the technical evaluation board's comparative assessment of the quotations, presented to and reviewed by the SSA along with the price evaluation summary, as well as the SSA's requests for and consideration of clarifications from the board, we cannot agree with the protester that the fact that the SSA adopted the board's findings indicates that he failed to exercise his independent judgment in the source selection. The SSA simply exercised his judgment based on his review of the technical evaluation board's findings. See e.g., Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33.