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Decision

Matter of: Cambridge Systems, Inc.

File: B-400680; B-400680.3

Date: January 8, 2009

Antonio R. Franco, Esq., Isaias Alba, IV Esq., and Kelly E. Buroker, Esq., Piliero Mazza PLLC, for the protester.

William A. Roberts III, Esq., and Richard B. O’Keeffe, Jr., Esq., Wiley Rein LLP, for Chugach/Evergreen Joint Venture, the intervenor.

Maj. Carla T. Peters, Department of the Army, for the agency.

Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency’s decision to establish a revised competitive range and conduct discussions with small business concerns whose proposals were deemed the most highly rated rather than withdraw the set-aside and reissue the solicitation on an unrestricted basis was reasonable under the circumstances; the exclusion of technically marginal proposals from the competitive range, while permissible, is not required.

DECISION

Cambridge Systems, Inc. of Chantilly, Virginia protests the decision by the Department of the Army, Space and Missile Defense Command (SMDC) to establish a revised competitive range under request for proposals (RFP) No. W9113M-07-R-0004, issued as a small business set-aside for installation and testing of an integrated commercial intrusion detection system-IV (ICIDS-IV). Cambridge, the apparent awardee which was later determined ineligible for award under the applicable small business size standard, challenges the agency’s decision to establish a revised competitive range rather than cancel and reissue the solicitation on an unrestricted basis.

We deny the protest.

The ICIDS-IV is a detection system used to monitor designated areas and facilities for all military installations located inside and outside the continental United States. The objective of the ICIDS-IV program is to provide a standard configuration that will allow personnel to take the required action when unauthorized attempts to enter

these designated areas and facilities are detected. The solicitation's statement of work provided detailed descriptions of the contract requirements that included hardware, software, design effort, training, and technical support for the ICIDS-IV system.

The solicitation contemplated the award of an indefinite-delivery, indefinite quantity task order contract for a base and five 1-year ordering periods to the offeror whose proposal was determined to represent the best value to the government. The solicitation provided for proposals to be evaluated under three evaluation factors: technical (with five subfactors), past performance, and price. The technical factor was stated to be more important than past performance, which was more important than price and, when combined, the non-price factors were significantly more important than price. The solicitation also provided that to receive consideration for award, proposals had to receive at least an acceptable rating under the technical factor, its subfactors and the past performance factor.¹ RFP at 144.

Seven offerors, including Cambridge, submitted proposals by the extended closing date. The agency's source selection evaluation board (SSEB) evaluated proposals using adjectival ratings of excellent, good, satisfactory, marginal, or unsatisfactory for the technical factor and subfactors. Under past performance, the proposals were assigned performance risk ratings of either low, moderate, high, or unknown. Agency Report (AR) exh. 24, SSEB Findings at 10-11 (Apr. 24, 2008). Cambridge's technical proposal received an overall rating of excellent, with low risk and the proposals submitted by Chugach/Evergreen Joint Venture (Chugach) and Sim-G Technologies LLC (Sim-G) each received an overall rating of marginal, with low risk. Neither Chugach's nor Sim-G's proposal was rated unsatisfactory under the non-price factors and subfactors.² AR exh. 24, SSEB Findings at 13 (Apr. 24, 2008).

¹ The agency reports that for the technical factor and its subfactors, the adjectival rating that corresponds to an acceptable rating is satisfactory. For past performance, the adjectival rating that corresponds to an acceptable rating is medium risk. Contracting Officer's Statement at 4.

² The other four proposals not at issue here received overall technical ratings ranging from marginal with medium risk to unsatisfactory.

The proposal ratings which are relevant to this protest were defined as follows:

Marginal	Overall quality cannot be determined because of errors, omissions or deficiencies which are capable of being corrected without a major rewrite or revision of the proposal.
Unsatisfactory	A proposal which contains major errors, omissions or deficiencies, or an unacceptably high degree of risk in meeting the Government's requirements; and these conditions can not be corrected without a major rewrite or revision of the proposal.
Low Risk	Based on Offeror's past performance record, essentially no doubt exists that the Offeror will successfully perform the required effort.

AR exh. 24, SSEB Findings at 10-11 (Apr. 24, 2008).

After reviewing the SSEB evaluation findings, the contracting officer determined that only Cambridge's proposal, the most highly rated, would be included in the competitive range. *Id.* exh. 25, Source Selection Decision Document. The agency sent letters to the other offerors informing them that their proposals were excluded from the competitive range and would not be considered further for award. AR exh. 9, Letter to Offerors. The agency conducted discussions with Cambridge, received and evaluated its revised proposal and determined that Cambridge's proposal represented the best value to the government. Notice of intent to make award to Cambridge was sent to the six offerors whose proposals had been excluded from the competitive range. AR exh. 11, Pre-award Notice.

Sim-G filed a timely protest regarding Cambridge's size status with the contracting officer, who forwarded it to the Small Business Administration (SBA). The SBA dismissed the pre-award size protest because Sim-G was not an interested party since its proposal was excluded from the competitive range. AR exh. 13, SBA Letter. However, based on the concerns raised in the size protest, the SBA initiated its own formal size review and ultimately determined Cambridge to be other than small under the applicable size standard for this procurement and thus ineligible for award. AR exh. 15, SBA Letter to Cambridge (Aug. 25, 2008). As a result of the SBA's determination, the agency notified Cambridge that the firm was no longer eligible for award.

The agency then decided to establish a revised competitive range consisting of the remaining most highly rated proposals. After again reviewing the initial evaluation results of the other six offerors, including the associated strengths and weaknesses of the proposals, the contracting officer determined that the proposals submitted by Chugach and Sim-G, would be included in the revised competitive range. AR exh. 17,

Revised Competitive Range Determination at 1-2. In this regard, the contracting officer stated:

. . . based on the elimination of Cambridge from the competition, I determine that these offerors represent the most highly rated proposals. As such, I determine it to be in the Government's best interest to reinstate them back into the competition, include them in the revised competitive range [discuss the technical and price related concerns relative to their initial proposals], and consider their final proposal revisions.

Id. at 2. This protest followed.³

Cambridge alleges that the agency impermissibly reopened the competitive range to conduct discussions with Chugach and Sim-G, whose initial proposals were previously determined technically marginal overall. Protest at 3. It asserts that since the proposals of the remaining small business offerors received evaluation ratings that were not acceptable, *i.e.*, satisfactory, the set-aside should be withdrawn and the procurement recompeted on an unrestricted basis. Protester's Comments at 4-6.

The decision to establish a competitive range and the determination whether a proposal should be included therein is principally a matter within the sound judgment of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. The significance of the weaknesses and/or deficiencies in an offeror's proposal, within the context of a given competition, is a matter for which the procuring agency is, itself, the most qualified entity to render judgment. Our Office will review that judgment only to ensure it was reasonable and in accord with the solicitation provisions; a protester's mere disagreement with an agency's judgment does not establish that the judgment was unreasonable. Albert Moving & Storage, B-290733, B-290733.2, Sept. 23, 2003, 2003 CPD ¶ 8 at 6; CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2.

We find Cambridge's argument that the agency improperly established a revised competitive range comprised of allegedly technically unacceptable proposals without merit. Under the regulatory scheme applicable here, the contracting officer was required to establish a competitive range comprised of all of the most highly rated proposals based on the "ratings of each proposal against all evaluation

³ In a supplemental protest, the protester contends that the solicitation was improperly amended, constitutes technical transfusion and was tantamount to an improper technical leveling using the protester's proprietary information. In response to the agency's report on these issues, the protester expressly withdrew these allegations. Protester's Comments at 1-2.

criteria.” Federal Acquisition Regulation (FAR) § 15.306(c)(1). As mentioned previously, of the remaining small business offerors, the initial proposals submitted by Chugach and Sim-G were determined to be the most highly rated based on the overall technical rating of marginal. That is, the agency evaluators concluded that any errors or deficiencies in the proposals could be corrected through discussions without a major rewrite or major revision of proposals.

Moreover, contrary to the protester’s view, the solicitation did not require the inclusion of only technically acceptable proposals in the competitive range. Rather, as noted above, section M of the solicitation simply mandated that to be considered for award, proposals had to receive at least an acceptable rating under the non-price evaluation factors. In any event, as the agency and Chugach both argue, based on the initial evaluation of proposals the two offerors included in the revised competitive range were determined capable of performing the required effort, and Cambridge has not shown otherwise. Since the record indicates that neither Chugach’s or Sim-G’s initial proposal were rated unsatisfactory under any non-price factor, we find the contracting officer reasonably concluded that the agency could receive offers from these two small businesses at fair market prices if discussions were conducted with both concerns. In short, we are not persuaded by, and nothing in the record supports, the protester’s contention that the agency was required to withdraw the set-aside and reissue the solicitation on an unrestricted basis.

Finally, the protester maintains that the agency impermissibly reopened the competitive range despite a FAR provision prohibiting it to do so. The provision in question provides as follows:

If an offeror’s proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror’s proposal shall be accepted or considered.

FAR § 15.307(a). Under this provision, the contracting agency is prohibited from accepting further proposal revisions from an offeror where the offeror’s proposal is excluded from the competitive range. In our view, this provision does not address the situation where, as here, the agency decides to establish a new and/or revised competitive range; it would be unreasonable to interpret this provision to effectively deprive the agency of the discretion to establish a new and/or revised competitive range, to conduct discussions with competitive range offerors, or to evaluate revised proposals. In fact, FAR part 15 recognizes the authority to make successive competitive range determinations albeit generally with the intent of narrowing the competitive range. However, GAO consistently has upheld the agency’s authority to establish successive competitive ranges. Dynacs Eng’g Co., Inc., B-284234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 4; see also FAR § 15.306(c)(3).

Here, we have already concluded that the contracting officer reasonably determined that of the remaining offerors, Chugach’s and Sim-G’s proposals were the most

highly rated, and our review of the record shows that this determination was consistent with the terms of the solicitation and the applicable procurement regulations. As a result, the contracting officer's decision to establish a revised competitive range and conduct discussions with these two offerors was reasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel