



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: DB Consulting Group, Inc.

File: B-401543.2; B-401543.3

Date: April 28, 2010

David P. Metzger, Esq., Caitlin K. Cloonan, Esq., and C. Scott Morrow, Esq., Arnold & Porter LLP, for the protester.

Amy L. O'Sullivan, Esq., Marc F. Efron, Esq., John E. McCarthy, Jr., Esq., Puja Satiani, Esq., and Howard Yuan, Esq., Crowell & Moring, LLP, for ASRC Primus, an intervenor.

Richard J. McCarthy, Esq., Daniel C. Hymer, Esq., and John H. Eckhardt, Esq., National Aeronautics and Space Administration, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated proposals is denied where record shows that agency's evaluation was consistent with terms of solicitation and applicable procurement statutes and regulations.

2. Protest that agency failed to engage in adequate discussions is denied; agency was not legally obligated to conduct discussions in areas in question.

DECISION

DB Consulting Group, Inc., of Silver Spring, Maryland, protests the award of a contract to ASRC Primus, of Greenbelt, Maryland, under request for proposals (RFP) No. NNG08230770R, issued by the National Aeronautics and Space Administration (NASA) for integrated information technology services at the Goddard Flight Center. DB maintains that the agency misevaluated proposals, failed to provide it with adequate discussions, and made an unreasonable source selection decision.

We deny the protest.

BACKGROUND

The acquisition, set aside for section 8(a) concerns,¹ contemplated the award of an indefinite-delivery/indefinite-quantity (ID/IQ), fixed-price, incentive fee contract to perform a wide array of information technology support services during a 5-year effective ordering period, measured from the date of contract award. RFP Cover Letter, Aug. 22, 2008, Agency Report (AR), exh. 2, at BATES 139.² The RFP provided that award would be made on a “best value” basis considering price and two non-price factors—mission suitability and past performance. AR, exh. 2, at BATES 254. Price was significantly less important than the mission suitability and past performance factors combined. Id.

The RFP also advised that the evaluation would be conducted in accordance with the requirements outlined at Federal Acquisition Regulation (FAR) part 15.3, and NASA FAR Supplement (NFS) part 1815.3.³ AR, exh. 2, at BATES 254. With respect to the mission suitability factor, consistent with NFS § 1815.304-70, the agency would assign point scores to the subfactors under the mission suitability factor—performance work statement (PWS)/technical approach (400 possible points), representative task orders (300 points), management approach (250 points), and safety and health (50 points)—for a possible total score of 1,000 points. AR, exh. 2, at BATES 259. As further outlined in NFS § 1815.304-70(b)(2), the agency would arrive at point scores by assigning proposals an adjectival rating and percentile rating under each subfactor,⁴ and then multiplying the possible point score by the percentile rating assigned. In evaluating past performance, proposals would be assigned adjectival confidence ratings, consistent with NFS § 1815.305, of very high level, high level, moderate level, low level, very low level, or neutral. AR, exh. 2, at BATES 261-62.

Price was to be evaluated for fairness and reasonableness; the RFP also provided that a cost realism evaluation could be conducted to assess contractor responsibility and performance risk. AR, exh. 2, at BATES 260. The RFP further provided, in

¹ Section 8(a) of the Small Business Act authorizes procurements to be set aside for socially and economically disadvantaged small business concerns. 15 U.S.C. § 637(a) (2006).

² The entire record in this case was sequentially numbered by the agency using a “BATES” numbering system.

³ The NFS is located at 48 C.F.R. ch. 18.

⁴ The adjectival rating scheme and accompanying percentile ranges, as outlined in NFS § 1815.305(a)(3), are as follows: excellent (91 to 100 percent); very good (71 to 90 percent); good (51 to 70 percent); fair (31 to 50 percent); and poor (0 to 30 percent).

connection with the agency’s price evaluation, that the agency would evaluate the extent to which the offerors’ proposed prices indicated a clear understanding of the solicitation’s representative task orders, and reflected a sound approach to satisfying their objectives; where the agency determined that proposed prices were either unrealistically high or low, and the proposal contained no explanation for the unrealistically high or low price, the agency would assign the proposal a risk under the mission suitability factor. Id.

The agency received several proposals and, after evaluating them, placed three of them in the competitive range, including those submitted by the protester and the awardee. AR exh. 21. The agency held discussions with the competitive range offerors and obtained final proposal revisions (FPR). The agency evaluated the FPRs as follows:

Mission Suitability	ASRC	DB	Offeror A
PWS/Tech. App. (400)	Very Good (332)	Very Good (340)	Fair (152)
RTO (300)	Good (186)	Good (180)	Fair (102)
Mgmt. App. (250)	Excellent (227.5)	Good (157.5)	Good (150)
Safety and Health (50)	Good (30)	Good (30)	Good (30)
Total Point Score	775.5	707.5	434
Past Performance	Very High Confidence	Very High Confidence	Very High Confidence
Price⁵	\$13,333,367	\$18,296,164	\$8,419,459

AR, exh. 35, at BATES 6189. On the basis of these evaluation results, the agency made award to ASRC, finding that that firm’s proposal offered the best value to the government. AR exh. 37.

PROPOSAL EVALUATION

DB challenges the evaluation of proposals on numerous grounds. In considering protests challenging an agency’s evaluation of proposals, we will not reevaluate proposals; rather, we will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the

⁵ Prices were expressed in the evaluation results in a number of ways; this chart includes only a single price for each concern, expressed in the evaluation materials as the “Government’s Maximum Exposure” price.

solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Vermont, B-295126.5, B-295126.6, Dec. 7, 2007, 2008 CPD ¶ 4 at 3-4. We have considered all of DB's assertions and find them to be without merit. We discuss DB's principal contentions below.

Point Score Assignments

DB asserts that, in evaluating proposals, the agency arbitrarily assigned percentage ratings/point scores. According to the protester, even where its and the awardee's proposals received the same adjectival ratings, the percentage ratings, and hence the point scores assigned, were different for each proposal. DB maintains that the record does not contain an explanation of how the percentage ratings/point scores were determined.

We find no merit to this aspect of DB's protest. The record shows that the agency evaluated proposals as provided for in the RFP and applicable regulations, that is, the source evaluation board (SEB) first prepared extensive narrative materials that outlined the significant strengths, strengths, weaknesses, significant weaknesses and deficiencies in each proposal. Thereafter, the evaluators considered the definitions for the various adjectival ratings included in NFS § 1815.305 to determine the appropriate adjectival and percentile rating based on the identified strengths and weaknesses.

For example, in the case of the protester, the record shows that the agency found, under the technical approach/PWS subfactor, that the firm's proposal had one significant strength, four strengths, five weaknesses and no significant weaknesses or deficiencies. AR, exh. 35, at BATES 6235-50. Based on these findings, the agency assigned the protester's proposal an adjectival rating of very good, consistent with the definition of very good in NFS § 1815.305, which describes a very good proposal as follows: "A proposal having no deficiency and which demonstrates over-all competence. One or more significant strengths have been found, and strengths outbalance any weaknesses that exist."

In comparison, the evaluators found that ASRC's proposal had one significant strength, two strengths, four weaknesses and no significant weaknesses or deficiencies under the technical approach/PWS subfactor; the evaluators also assigned ASRC's proposal an adjectival rating of very good. AR, exh. 35, at BATES 6190-05.

In assigning point to the two proposals, however, the record shows that the agency differentiated between the two offers, finding the protester's proposal slightly stronger under the technical approach/PWS subfactor. In this respect, the record shows that the agency assigned DB's proposal an 85 percent rating under this subfactor (for a numeric score of 340 points), while at the same time assigning the

ASRC proposal an 83 percent rating under this subfactor (for a numeric score of 332 points). AR, exh. 35, at BATES 6189.

We find nothing objectionable in the agency's actions. The evaluators assigned point scores in accordance with the rating scheme outlined in the RFP and NFS § 1815.305 in order to provide the source selection authority (SSA) with what amounted to a summation of their views--expressed elsewhere at length in the narrative evaluation materials--regarding the comparative merits of the competing proposals. As we have long noted, point scores or adjectival ratings are guides for intelligent decision making in the procurement process; where the record shows that the evaluators and SSA reasonably considered the underlying bases for the ratings in a manner that is consistent with the terms of the RFP, a protester's disagreement with the ratings or point scores assigned essentially is inconsequential. Burchick Constr. Co., B-400342.3, Apr. 20, 2009, 2009 CPD ¶ 102 at 4-5. In challenging the assignment of point scores, DB does not take issue with the agency's underlying substantive findings concerning the merits of the proposals which, the record shows, ultimately formed the basis for the SSA's selection decision. AR, exh. 37, at BATES 6428-37. Accordingly, we have no basis to object to the agency's scoring of proposals for the reasons advanced by DB.

Evaluation Against RFP Statement of Objectives (SOO)

DB asserts that the agency improperly failed to evaluate the proposals against the solicitation's SOO. According to the protester, the RFP required the agency to systematically evaluate the proposals against each and every objective articulated in the SOO (a document running some 20 pages in the RFP). The protester asserts that the evaluation failed to meet this solicitation requirement. This argument is without merit. While the evaluation criteria made reference to the SOO, nothing in the RFP provided that the agency would systematically evaluate proposals against the SOO. It thus was not required to perform the evaluation in this manner.

Evaluation of DB's Proposal

DB asserts that the evaluation improperly failed to recognize some [deleted] specific innovations offered in its proposal. According to the protester, the RFP required the agency to assess all proposed innovations. DB further asserts that, to the extent the agency did identify [deleted] other proposed innovations, it improperly "collapsed" the identified innovations into just a few proposal strengths or significant strengths, when it should have separately noted each innovation as a separate strength or significant strength.

This aspect of the evaluation was unobjectionable. Contrary to the protester's opinion of the merits of its proposal, the agency explains that many of the supposed innovations identified by DB did no more than meet the RFP's requirements, and thus cannot reasonably be described as innovations. For example, the agency notes

that one of the innovations cited by DB is [deleted]. DB Letter of Protest, Jan. 19, 2010, at 36. The agency states that it did not credit DB's proposal with a strength for this feature because the offered collaborative process already exists and, in any event, the proposal did not explain how this claimed innovation would be implemented. Contracting Officer's Statement of Facts, at 33. DB does not rebut the agency's position; it asserts only that this finding was not expressly noted in the contemporaneous evaluation record. As noted by the agency, however (and consistent with NFS § 1815.305), the agency's evaluation documentation is comprised of expressly noted strengths, weaknesses and deficiencies, and where a proposal merely met the RFP's requirements or otherwise did not contain a strength, weakness or deficiency, the agency's evaluation record made no separate note of this. AR, exh. 35. This was unobjectionable.

The agency's alleged "collapsing" of several innovations into a few strengths or significant strengths also does not provide a basis for questioning the evaluation. First, the solicitation did not set forth the manner in which evaluated innovations would be converted into strengths. Further, the record does not show that the agency followed a different approach in assigning strengths to other proposals. Finally, the record shows that all of the evaluated innovations were presented to the SSA, and that the SSA was fully aware of all of them when making her selection decision. AR exhs. 35, 36, 37. There is no indication that the manner in which DB's innovations were grouped into strengths had any effect on the selection decision. As with DB's other arguments above, DB does not challenge the substantive aspects of the agency's evaluation, but only objects to the presentation of that information in a particular manner; in effect, DB does not maintain that the agency improperly failed to credit its proposal with these strengths, but only that it did not "count" the strengths in a manner that DB maintains they should have been counted. This does not provide our Office a basis to question the evaluation.

Evaluation of ASRC's Past Performance

DB asserts that the agency miscalculated ASRC's past performance. Specifically, DB asserts that one of ASRCs' major subcontractors, Science Applications International Corporation (SAIC), was found by NASA's inspector general (IG) to have an improper organizational conflict of interest (OCI) in connection with its performance of a prior contract. DB maintains that the agency erred in failing to consider SAIC's performance under that prior contract, and should have downgraded ASRC under the past performance factor based on SAIC's OCI under the prior contract.

This argument is without merit. The agency explains that it did not consider that prior contract in its evaluation of ASRC's past performance because it was not relevant to the current requirement. In this connection, the RFP provided that the past performance evaluation would take into consideration contracts that were for products and services similar to those being solicited. AR, exh. 2, at BATES 261. The agency advises that the contract in question required a small number of SAIC

personnel to participate as members of a standing review board overseeing the development of the Orion spacecraft. Contracting Officer's Statement of Facts, at 34. In contrast, the current requirement is for a wide range of information technology support services. We agree with the agency that the contract in question was not relevant to the current requirement; the agency thus properly disregarded it.⁶

Price Evaluation

DB asserts that the agency improperly failed to evaluate the bases of estimates (BOE) used by the awardee in preparing its proposal. In this connection, the protester asserts that the agency was required to examine the BOE for each of the proposed representative task orders (RTO), and to evaluate whether the requirements of the solicitation were adequately addressed. According to DB, ASRC's approach was overly aggressive, and the agency's failure to evaluate the BOEs prevented it from observing this fact.

There is no merit to this argument. While the protester is correct that the agency did not make any separate findings relating to the adequacy of the offerors' BOE documentation, nothing in the RFP provided that the agency would base its evaluation on a discrete review of the firms' BOE documentation. Instead, in evaluating responses to the RTOs, the agency assessed risks against the proposals, and these were identified in the agency's technical evaluation materials as weaknesses.

For example, in evaluating ASRC's proposal for RTO No. 1, the agency originally assessed a weakness for failure to reflect an understanding of the staffing resources required for implementation of the task. Specifically, the agency noted that ASRC had failed to include adequate staffing resources to create customer outreach and communication artifacts, and to perform system engineering and quality assurance efforts; these considerations, according to the agency's original evaluation, created a risk of unsuccessful contract performance. AR, exh. 19, at BATES 3599. This weakness was brought to ASRC's attention during discussions. In response, ASRC increased its proposed staffing for RTO No. 1. AR, exh. 32 at BATES 5340. After evaluating the firm's FPR, the agency eliminated this weakness, finding that, based on the revision to its staffing profile, ASRC's proposal now included the resources necessary to meet the RTO's requirements in a manner consistent with the firm's

⁶ We note that, in any case, the agency reviewed its past performance database in the wake of DB's protest, and learned that there was no negative information relating to SAIC as a consequence of the IG finding under the prior contract. Upon further investigation, the agency learned from the cognizant contracting that the IG report had been largely critical of NASA rather than of SAIC, and that the matter did not reflect negatively on SAIC. Contracting Officer's Statement of Facts, at 34.

technical approach, thereby eliminating the risk of unsuccessful performance. AR, exh. 35, at BATES 6209. The record shows that this same process occurred with respect to all of the weaknesses originally identified by the agency in connection with ASRC's responses to the solicitation's RTOs.⁷ AR, exh. 35, at BATES 6206-10.

In the final analysis, DB does not identify what, in particular, about either ASRC's proposed approach or its BOE documentation is overly aggressive, or how this allegedly overly aggressive approach somehow was not observed or understood by the agency during its evaluation. DB's nonspecific assertion is insufficient to show that, in fact, there was something fundamentally inadequate in either ASRC's proposed technical solution to the RTOs or in the agency's evaluation of the ASRC proposal, including the underlying BOE documentation.⁸

DB also maintains that the agency failed to evaluate the proposed prices for reasonableness; it claims this analysis would have shown that ASRC's pricing was unreasonable. DB's assertion is misplaced, since ASRC's price was lower than DB's own proposed price; price reasonableness relates to a consideration of whether prices are too high, not whether prices are too low. Global Solutions Network, Inc., B-298682.3, B-298682.4, June 23, 2008, 2008 CPD ¶ 131 at 11.⁹

⁷ The record shows that the agency originally identified seven weaknesses in ASRC's proposal under the RTO subfactor. All were eliminated after discussions, but a new weakness was identified in ASRC's FPR. AR, exh. 35, at BATES 6206-6210.

⁸ In a related assertion, DB maintains that the agency failed to observe that ASRC increased the staffing in its technical proposal while at the same time decreasing its staffing in its FPR price proposal. The record shows, however, that the changes made by ASRC to its technical and price proposals in terms of staffing were solely for the purpose of aligning the two sections of its proposal and making them internally consistent. Compare, e.g., AR, exh. 32, at BATES 5340 and AR, exh. 33, at BATES 5450. Thus, there is no basis for a finding that ASRC used a different number of staff hours in calculating its price than it did in its technical solution.

⁹ In a similar vein, DB asserts that the agency improperly made several corrections to ASRC's price proposal. The record shows that the agency did make several minor corrections to ASRC's prices due to calculational omissions in the electronic spreadsheets ASRC used in preparing its proposal. However, the corrections resulted in an upward adjustment to ASRC's proposed price of \$86,089. AR, exh. 35, at BATES 6258. Since the corrections decreased the price differential between the two proposals, DB was not prejudiced by the agency's actions. Global Solutions Network, Inc., supra, at 10.

DISCUSSIONS

DB asserts that the agency improperly failed to provide it with meaningful discussions in two areas: (1) it failed to advise DB that its price was high in relation to the awardee's, and (2) it failed to discuss four weaknesses identified in its FPR.

Agencies are not required to advise a firm that its prices are considered high unless it concludes that the prices are unreasonably high, such that they would preclude award to the firm. Karrar Sys. Corp., B-310661, B-310661.2, Jan. 3, 2008, 2008 CPD ¶ 51 at 3. Here, there is nothing in the record to show, or even suggest, that the agency viewed DB's price as unreasonably high—i.e., so high that award to DB would be precluded. The agency therefore was under no obligation to hold discussions regarding DB's comparatively high price. As for the four new weaknesses, as noted, these weaknesses were identified for the first time in the evaluation of DB's FPR submitted in response to the agency's discussion questions; that is, the agency found that, in responding to its concerns, DB created new weaknesses in its proposal. The agency was under no legal obligation to reopen discussions in order to afford DB an opportunity to address these new weaknesses or deficiencies first introduced in its FPR. See Operational Resource Consultants, Inc., B-299131, B-299131.2, Feb. 16, 2007, 2007 CPD ¶ 38 at 12.

DISPARATE EVALUATION/SOURCE SELECTION DECISION

DB asserts that the agency evaluated its and ASRC's proposals disparately in two areas: the agency gave ASRC, but not DB, credit for proposing to have an ISO/IEC 20000 certified call center from the outset of contract performance, and also gave ASRC a significant strength under the management approach subfactor for use of a management tool (the ASRC task order management system), while not similarly crediting DB's proposal for a similar tool (the GUEST enterprise management system). We need not consider these aspects of DB's protest since, even if DB's proposal were assigned additional credit, such that it received a rating equivalent to ASRC's, it would remain that ASRC's price was lower than DB's, and that ASRC would remain in line for award. DB thus was not prejudiced by any evaluation error in these areas. Global Solutions Network, Inc., *supra*, at 10.

The protest is denied.

Lynn H. Gibson
Acting General Counsel