



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 version has been approved for public release.

Decision

Matter of: KBS, Inc.

File: B-402365.3

Date: February 2, 2011

John R. Lockard, Esq., and William E. Franczek, Esq., Vandeventer Black LLP, for the protester.

Terence Murphy, Esq., Patrick H. O'Donnell, Esq., and J. Bradley Reaves, Esq., Kaufman & Canoles, and David A. Hearne, Esq., Outland, Gray, O'Keefe & Hubbard, for Blueridge General, Inc., an intervenor.

David L. Nimmich, Esq., Department of the Navy, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency evaluation and best value tradeoff determination is denied where protester fails to show that either was unreasonable.

DECISION

KBS, Inc., of Richmond, Virginia, protests the award of a contract to Blueridge General, Inc., of Norfolk, Virginia under request for proposals (RFP) No. N40085-10-R-3002, issued by the Department of the Navy, Naval Facilities Engineering Command for exterior renovation and replacement of the roof of Building 3 at the Naval Medical Center in Portsmouth, Virginia. KBS challenges the evaluation of its proposal and the agency's best value tradeoff determination.

We deny the protest.

BACKGROUND

The RFP provided for award to the offeror whose proposal represented the best value to the government based on six equally-weighted technical evaluation factors (corporate experience, past performance, management approach/schedule, technical solution, safety, and small business utilization) and price. The technical evaluation factors, when combined, were approximately equal in weight to price.

Three offerors submitted proposals prior to the February 17, 2010 closing date. The agency evaluated the proposals, established a competitive range of two (Blueridge and KBS), conducted discussions, and selected Blueridge's proposal for award. KBS protested the award with our Office and, shortly thereafter, the agency advised our Office that it intended to take corrective action by reopening discussions, reviewing the responses, and performing a new best value determination. We dismissed the protest as academic.

The agency's technical evaluation panel (TEP) reconvened and reviewed the technical proposals; the agency then reopened discussions with the offerors and invited them to submit revised proposals. After reviewing the revised proposals, the TEP assigned the following ratings:

Factor	Blueridge	KBS
Corporate Experience	Satisfactory	Satisfactory
Past Performance	Good	Good
Mgmt. Approach/Schedule	Satisfactory	Satisfactory
Technical Solution	Excellent	Marginal
Safety	Good	Good
Small Business Utilization	Good	Satisfactory
Overall	Good	Satisfactory

Source Selection Board (SSB) Report, Nov. 8, 2010, at 2.¹ Blueridge's proposed price was \$33,655,729, whereas KBS's was \$29,350,000. Ultimately, the source selection authority (SSA) concluded that Blueridge's significant superiority under the technical solution factor, along with its edge under the small business utilization factor, justified the payment of a price premium of approximately \$4.3 million. The agency notified the offerors of Blueridge's selection on November 17 and KBS filed the subject protest on November 23.

DISCUSSION

¹ The TEP rated proposals under the technical evaluation factors as excellent, good, satisfactory, marginal, poor, or no rating (applicable to the past performance factor only). A rating of marginal was assigned if a proposal demonstrated a limited understanding of requirements and it was questionable whether acceptable contract performance would result. Source Selection Plan at 19.

The protester challenges the agency's evaluation under the technical solution factor, arguing that its proposal should have received a rating of at least satisfactory. KBS also argues that the agency's best value tradeoff determination was unreasonable.²

For the purpose of evaluating proposals under the technical solution factor, the RFP instructed offerors to furnish a narrative describing "the construction means and methods" that they would use to accomplish the project. The solicitation also furnished a detailed list of project requirements that the narrative was required to address.³ When, as corrective action in response to KBS's first protest, the agency reopened discussions, one of the concerns that it raised with the protester was the lack of detail in its narrative. Specifically, the agency advised KBS as follows:

The Government finds your narrative for Technical Factor 4 to be lacking in detail. In particular, your narrative consists primarily of conclusory statements asserting that you will perform the work and does not demonstrate your understanding of how you will accomplish the work. The solicitation asks offerors to "describe the construction means and methods" the offeror will use to successfully complete the project. The Government reviews this factor to determine whether an offeror has a good comprehension of the work required to complete the project and how it intends to complete the work. Please review

² In its initial protest, KBS also took issue with the agency's evaluation of Blueridge's proposal under the technical solution evaluation factor. The agency requested dismissal of this complaint on the grounds that the protester had not alleged facts in support of its argument that the rating was unreasonable. We agreed and dismissed the argument as legally insufficient on December 16.

³ Specifically, the RFP provided that, at a minimum, the narrative should address:

scaffolding approach and scaffolding support as it pertains to masonry work at walls above lower roof areas, control of construction mixing/rinsing runoff, face brick and parapet demolition, face brick wall and parapet construction, roofing demolition and installation at the upper roof levels . . . , removal/storage and reinstallation of select salvaged materials, investigation and repair of existing structural steel floor beams, erection and construction of main entrance canopy, and survey methods for maintaining dimensional control . . . planned methodologies for negating the potential deleterious effects of natural environmental factors such as rain, sleet, snow, heat, cold, wind, tropical storms, and hurricane preparedness on the execution and quality of work.

RFP at 60.

your narrative and drawings in light of the Government's objective and, if you so choose, revise as necessary.

Contracting Officer's Letter to Protester, Sept. 10, 2010, Encl. 1. The agency also asked the protester to explain further its plan for protecting the building in the event of severe weather and its plans for constructing scaffolding.

After reviewing KBS's proposal, as revised in response to discussions, the technical evaluators continued to rate it as marginal under the technical solution factor, noting that the protester's narrative still lacked detail and that the protester's responses to the discussion questions had introduced new weaknesses into the proposal. Specifically, the evaluators concluded that while KBS's revised proposal provided some additional details, they were "primarily in the areas of narrative responsive to the specific questions posed by the government;" according to the TEP, areas not specifically identified by the government continued to be addressed in a vague, conclusory manner, which did not "fully alleviate the government's concerns regarding the offeror's understanding of all tasks and required effort to perform this complex project successfully." Revised Technical Evaluation Panel Report, Oct. 14, 2010, at 28.

Regarding KBS's response to the discussion item pertaining to protection of the building from severe weather, the agency's evaluators noted that KBS had proposed to install a waterproof membrane, but found that KBS failed to furnish sufficient detail regarding the type of membrane and method of attachment, which raised additional concerns since use of certain types of membranes or methods of attachment could prevent the subsequent proper installation of brick and grout. The evaluators also found that KBS's revised proposal gave rise to new concerns regarding its approach to reconstructing the parapets.⁴

⁴ With regard to the parapets, the evaluators noted as follows:

The Corrective Action discussion responses included additional narrative regarding methods for performing the parapet work. The proposed method, however, which would leave the parapet brick veneer intact until the brick veneer of the wall below is re-built, raises additional concerns regarding potential tipping/collapse unless temporary support is provided. Bldg. 3 is fifty (50) years old, so mortar/brick/steel reinforcement is weakened. Also, the original steel reinforcement design does not meet current code requirements for lateral stability. Proposed approach will weaken the existing parapets since KBS will not utilize temporary supports to keep the parapets from tipping and falling. Therefore, there is risk of causing potential property damage and safety concerns.

Id.

The protester maintains that the weaknesses identified by the evaluators were not significant enough for its proposal to have been rated as merely marginal under the technical solution factor. In this regard, KBS asserts that the TEP “noted no serious issues” with its proposed approach. Protester’s Comments, Jan. 5, 2011, at 4. In the alternative, KBS argues that the agency should have reopened discussions to address the weaknesses identified in KBS’s revised proposal. The protester also argues that the agency failed to conduct meaningful discussions with it by failing to identify all aspects of its technical solution that the evaluators considered to be vague.

In reviewing protests objecting to an agency’s technical evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation. CMI Mgmt., Inc., B-402172, B-402172.2, Jan. 26, 2010, 2010 CPD ¶ 65 at 2. Here, the record clearly demonstrates a reasonable basis for the rating of marginal, to wit, the proposal’s general lack of detail, together with its failure to demonstrate a viable approach to protecting the building in severe weather and to performing the parapet work, demonstrated a limited understanding of the project. The fact that the protester disagrees with the evaluators as to the significance of the weaknesses in its proposal does not demonstrate that the evaluators’ judgment was unreasonable.

With regard to the protester’s argument that the agency should have reopened discussions with it to address the weaknesses identified in its revised proposal, where an offeror introduces an element in a post-discussions revision to its proposal that the agency views as a weakness or deficiency, the agency is not required to reopen discussions to address the new concern. Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68 at 7. Further, with regard to the protester’s argument that the agency failed to conduct meaningful discussions with it by failing to identify each specific element of its proposed approach that the agency considered to be insufficiently detailed, the requirement for meaningful discussions is satisfied when an agency leads an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required, nor is the agency obligated to “spoon-feed” an offeror as to each and every item that could be revised to improve its proposal. ITT Indus. Space Sys., LLC, B-309964, B-309964.2, Nov. 9, 2007, 2007 CPD ¶ 217 at 12. Accordingly, we find both of these arguments to be without merit.

Finally, KBS challenges the agency’s best value trade-off determination, arguing that the SSA failed to document any meaningful qualitative difference between the two proposals warranting payment of a substantial price premium and that the SSA gave undue weight to the technical solution factor in her tradeoff analysis.

The protester’s assertion that the SSA failed to document the basis for her best value determination is not supported by the record. The SSA’s decision document details, at length, her basis for finding Blueridge’s technical solution far superior to the protester’s and explains why Blueridge’s advantages were worth paying its higher price. SSA Report, Nov. 9, 2010, at 2. To the extent KBS maintains that the SSA gave undue weight to the technical solution factor in making her tradeoff decision, noting

that it was only one of six equally weighted technical factors, this argument is also without merit. It is not inconsistent with an evaluation scheme in which technical factors are of equal weight for an agency to distinguish between proposals on the basis of one of those factors. See Keane Fed. Sys., Inc., B-280595, Oct. 23, 1998, 98-2 CPD ¶ 132 at 16.

The protest is denied.

Lynn H. Gibson
General Counsel