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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: The Mangi Environmental Group, Inc.

File: B-299721.3

Date: August 2, 2007

James I. Mangi for the protester.

Azine Farzami, Esq., Department of Agriculture, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's corrective action taken in response to earlier Government Accountability Office protest is denied; corrective action that included reopened discussions, provision of additional documents, oral presentation, and revised proposals, was reasonable response to protest that agency misled protester in discussions and where original awardee had obtained additional documents in pre-performance meeting with agency.

DECISION

The Mangi Environmental Group, Inc. challenges the adequacy of the agency's corrective action in response to its protest of an award to Geo Marine, Inc. (GMI) under request for proposals (RFP) No. AG3151-S-07-0001, issued by the Department of Agriculture (USDA), Farm Service Agency (FSA), for programmatic environmental assessments (PEA). Mangi asserts that the corrective action does not remedy the competitive advantage obtained by GMI when it received post-award information that was not available to all offerors.

We deny the protest.

The RFP was issued in response to a lawsuit by the National Wildlife Federation against FSA that resulted in a negotiated settlement between the parties and called for an additional National Environmental Policy Act analysis of the effects of managed haying and grazing in 20 states identified in the settlement agreement. The original environmental impact statement on which the lawsuit was based was completed by Mangi. The RFP contemplated the award of a contract for 17 fixed-price contract line items, along with 2 reimbursable items (travel and

supplies) to supply all necessary labor, materials, and expertise to complete 20 individual PEAs.¹ Proposals were to be evaluated under three equally-weighted factors--past performance, technical capability, and price--with the non-price factors combined being of greater importance than price. Award was to be made on a "best value" basis.

Four proposals, including Mangi's and GMI's, were received and evaluated. One proposal was eliminated due to its technical deficiencies, and Mangi's, GMI's, and a third offeror's proposals were placed in the competitive range. After requesting and evaluating final proposal revisions, the agency selected GMI's proposal as the best value and made award to that firm. After receiving a debriefing, Mangi challenged the award in a protest filed in our Office, asserting that the agency had misled it in discussions and challenging the logic of the agency's award to GMI at a higher price. In response to Mangi's protest, the agency notified our Office that it intended to take corrective action, including reopening the competition and making a new source selection. Pursuant to these plans, the agency amended the RFP to make changes and to request revised proposals, terminated GMI's contract, and conducted discussions with the three competitive range offerors. We dismissed the protest as academic (B-299721, May 9, 2007).

Thereafter, Mangi requested reconsideration of our decision, asserting that the corrective action was inadequate because GMI had received information at a pre-performance "kick-off" meeting with the agency that allegedly provided GMI with a competitive advantage as it revised its proposal. The agency notified our Office that it intended to take further corrective action that would include providing the kick-off meeting documents to all offerors; providing an opportunity for those offerors to make an oral presentation; and requesting second revised proposals. We then dismissed the reconsideration request as academic (B-299721.2, May 25, 2007). After receiving the amendment providing the kick-off meeting documents, Mangi questioned the agency on whether the corrective action would remedy all of the inequities perceived by the protester. When the agency did not respond to its inquiries, Mangi filed this protest in our Office.

Mangi asserts that GMI obtained unfair competitive advantages in the reopened competition. For example, Mangi infers that the kick-off meeting provided GMI with non-documentary information with regard to performance of the task order--insights, understanding, perspective, priorities, and feedback--that Mangi did not have. In Mangi's view, the agency's corrective action did not remedy these advantages.

¹ The RFP erroneously included a clause that described the anticipated contract as an indefinite-delivery/indefinite-quantity (ID/IQ) task order contract. Amendment No. 001 to the RFP eliminated references to task orders and made clear that a fixed-price contract was to be awarded.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Patriot Contract Servs. LLC et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4. We will not object to the specific proposed corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3.

The corrective action here is well within the broad discretion afforded to contracting agencies in these circumstances. With regard to the kick-off meeting, the agency explains that the meeting was solely to discuss strategies, approaches, and contractual obligations for the contract. It was not a data gathering meeting and the only information provided was information then currently available on the internet. Contracting Officer's Statement at 1. While the agency intended for GMI to create a detailed approach plan for review prior to any additional project performance, because of Mangi's first protest, the agency never received any additional information from GMI. FSA Response to Mangi Question No. 2.

Generally, an agency must assure that it provides enough information through a solicitation, or otherwise, to allow offerors to compete intelligently and on relatively equal terms. Holmes & Narver Servs., Inc., B-242240, Apr. 15, 1991, 91-1 CPD ¶ 373 at 4. However, the government is not required to compensate for the competitive advantage derived from a firm's status as the incumbent contractor, unless the advantage resulted from improper preferential treatment or unfair action. University Research Corp., B-228895, Dec. 29, 1987, 87-2 CPD ¶ 636 at 5.

While Mangi speculates about unspecified insights GMI may have gained to the agency's requirements, there is nothing to indicate that GMI obtained any preferential treatment or otherwise gained any unfair competitive advantage from the kick-off meeting. Here, the agency has taken reasonable steps to remedy any advantage that was gained. In this regard, it debriefed Mangi after the original award to GMI and discussed its proposal; it held tailored discussions with Mangi; and it allowed the protester to make a presentation on the firm's own strategies for contract performance. While Mangi wanted feedback from the agency in this presentation, there was no requirement that the agency attempt to recreate the kick-off meeting experience for Mangi or the other offeror. In our view, the agency's corrective action reasonably put Mangi on a comparable footing with GMI in the reevaluation.

Mangi also asserts that GMI obtained a cost advantage through its performance of initial tasks that would not have to be costed in GMI's final price proposal. The agency maintains that there is no cost advantage, since GMI, if awarded the contract, will have to perform all contract requirements, including attendance at another kick-off meeting. Even if it were possible to quantify the supposed cost advantage, we see this as no different from the usual case of an incumbent's advantage; as such,

it is not a matter the agency can or must remedy. (We note that Mangi also enjoyed some advantage from its knowledge of GMI's original price.)

In sum, the agency's approach to corrective action addressed all of Mangi's valid concerns, and therefore was unobjectionable.

The protest is denied.

Gary L. Kepplinger
General Counsel