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Decision

Matter of: The Mangi Environmental Group, Inc.

File: B-299721.4

Date: January 24, 2008

J. Patrick McMahon, Esq., and William T. Welch, Esq., Barton, Baker, McMahon & Tolle, LLP 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 that evaluation of protester's proposal was flawed is denied where agency reasonably found proposal was confusing and contained numerous weaknesses and deficiencies.

DECISION

The Mangi Environmental Group, Inc. challenges the award of a contract 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 technical evaluation and source selection were flawed.

We deny the protest.

The RFP was issued in response to a lawsuit by the National Wildlife Federation (NWF) that resulted in a negotiated settlement with FSA and called for an additional National Environmental Policy Act (NEPA) analysis of the effects of managed haying and grazing on lands involved in the Conservation Reserve Program (CRP) in 20 states identified in the settlement agreement.¹ The original environmental impact statement (EIS) on which the lawsuit was based was completed by Mangi. The RFP

¹ According to the RFP, the CRP is the largest voluntary conservation program operated by the federal government and has implemented conservation practices on over 36 million acres of private land. RFP § 1.

contemplated the award of a contract for 17 fixed-price and 2 reimbursable (travel and supplies) contract line items to supply all necessary labor, materials, and expertise to complete 20 individual PEAs. Proposals were to be evaluated under three equally-weighted factors--past performance, technical capability, and price--with the non-price factors combined 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. Mangi's, GMI's, and a third offeror's proposals were included in the competitive range (the fourth proposal was eliminated due to technical deficiencies). After requesting and evaluating final proposal revisions (FPR), the agency selected GMI's proposal as the best value and made award to that firm. Mangi protested the award and the agency took corrective action, reopening the competition and making a new source selection.²

The three offerors in the competitive range were given the opportunity to make oral presentations and to submit new FPRs under the reopened competition. The technical evaluation panel (TEP) reviewed the FPRs and reached the following consensus ratings:

	Mangi	GMI	Offeror 3
Technical Capability	Incapable	Very capable	Capable
Past Performance	Unsatisfactory	Satisfactory	Satisfactory
Overall Capability	Incapable	Very capable	Capable
Price	\$612,858	\$1,201,884	\$1,014,220

Based on the TEP's evaluation, the contract specialist recommended GMI's proposal for award as the best value, noting, in part, its capability rating of very capable, GMI's experience on similar FSA projects, the absence of litigation in connection with GMI's over 800 projects, its clearly stated project management and project controls, the extremely qualified proposed personnel and industry experts, and the proven experience of the proposed subcontractors. Agency Report (AR), Tab 16, at 7. Award to Mangi was not recommended due to its incapable technical rating, and because its low price, together with its lack of technical understanding, was viewed as posing a performance risk. Id. at 6-7. The contracting officer, as source

² We dismissed the initial protest as academic (B-299721, May 9, 2007). When Mangi sought reconsideration based on the proposed corrective action, the agency took additional corrective action and we dismissed the reconsideration request as academic (B-299721.2, May 25, 2007). Although Mangi continued to assert that the corrective action was inadequate, we denied its subsequent protest, finding the agency's approach reasonable. The Mangi Env'tl. Group, Inc., B-299721.3, Aug. 2, 2007, 2007 CPD ¶ 144.

selection authority (SSA), adopted these recommendations and made award to GMI. After a debriefing, Mangi filed this protest.

Mangi challenges the evaluation and award decision on numerous grounds, concluding that its proposal rating of incapable is not supported by the record. In Mangi's view, its proposal reasonably and adequately demonstrated the firm's experience and capability to perform the contract in all areas. We have considered all of Mangi's arguments and find that they provide no basis to object to the evaluation and award. We address Mangi's most significant arguments below.

TECHNICAL EVALUATION

The RFP advised offerors that, due to the size and complexity of the tasks to be performed, the agency envisioned the contractor serving as a prime, together with other consulting firms and subcontractors in each of the 20 states, to fulfill the RFP requirements. RFP § 2. Proposals were required to show the offeror's experience in preparing environmental impact analyses and documentation, including environmental assessments (EA) and EISs, in accordance with NEPA; describe the analytic process the offeror would use to identify impacts that could arise from project components; describe how the firm would establish impact significance criteria and ratings for predicting potential impacts identified for each environmental resource area; and include a staffing plan demonstrating the offeror's ability to execute the work within the constraints of the schedule.

In evaluating Mangi's proposal, the TEP found many weaknesses and deficiencies under the technical capability factor. For example, while the TEP found that Mangi had experience based on numerous projects, it found that none was clearly related to this procurement. AR, Tab 13, at 1. The TEP found that the proposal showed that Mangi had limited experience in implementing CRP programs, and did not demonstrate that the firm had the skill sets or experience in agricultural economics, range, and CRP enrollment that the agency considered essential for successful performance. AR, Tab 16, at 6. In this regard, one of the evaluators noted that the CRP is a voluntary program with agricultural economics as a critical element, yet the proposal did not demonstrate extensive knowledge or experience in this area. AR, Tab 13, at 6. Another evaluator, noting that the proposal identified projects in which the firm was "engaged," questioned what projects were actually completed. *Id.* at 16. The TEP also found both that the analytical processes and methods as set forth in Mangi's proposal were confusing and ambiguous, and that the proposal did not relate how those processes and methods could help meet the objectives of this specific project. AR, Tabs 12, at 1 and 13, at 16. Further, the TEP found that the proposal did not provide a linkage between staff knowledge and experience and their relevance to completing the contract. AR, Tab 13, at 6, 16. As a further example, regarding management of proposed subcontractors, the TEP found that the proposal failed to clearly provide the connection between the proposed management process and the personnel who would be performing the work. In this regard, the TEP found that

Mangi's organizational chart did not clearly explain roles and responsibilities, so that it was not clear who was responsible for what functions, and for managing which personnel. AR, Tab 13, at 2, 17.

Mangi's Approach

Mangi asserts that, although it did not propose a solution like that envisioned in RFP § 2, its proposal addressed all RFP requirements. It notes, for example, that its proposal set forth Mangi's extensive experience, including the preparation of some 350 EAs and EISs, and explained its analytical process. This process included developing a description of the proposed action and alternatives; identifying connected and cumulative actions, potential types of effects, priorities, and allocations; determining data, study needs, scoping issues, and alternatives and public involvement; conducting its analyses in accordance with its analytic process, documenting the results, and providing an innovative concordance analysis to show the ways in which each EA differs from the other ones in structure, analysis, schedule, and conclusions. Mangi Supplemental Comments at 4-5. With regard to its proposed subcontractors, Mangi notes that it clearly proposed that it would be responsible for the EAs and that the subcontractors would serve as specialty consultants; this recognized that performance would be based mainly on existing knowledge, literature reviews, and other appropriate material. *Id.* at 5-6. Since Mangi itself, not its subcontractors, was to be responsible for producing the 20 EAs, Mangi asserts that it was improper for the agency to criticize its proposal for failing to provide evidence of adequate management oversight of its subcontractors with regard to production of the EAs.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

This aspect of the evaluation was unobjectionable. While the agency was well aware that Mangi itself had extensive NEPA experience, as noted, the agency was concerned with the number of completed projects and its proposed subcontractors' apparent lack of NEPA experience. Further, while the agency recognized that the proposal stated that Mangi would perform the bulk of the work, it found that this was not so clear from a complete reading of the proposal. For example, immediately after stating that Mangi and its personnel would play a "major role in the centralized planning, conduct and documentation of the EAs," Mangi's proposal stated that its "[s]ubcontractors and their personnel familiar with each state will substantially assist with the state-by-state scoping, planning, data gathering and analysis within the systematic [Mangi] approach." Mangi Proposal at 23. This language led the agency to question whether Mangi might rely heavily on its proposed subcontractors, which was problematic because it appeared that they lacked NEPA experience. Here, as with the other areas of its proposal evaluated as weak or deficient, while

Mangi may have attempted to cover the requirements of the RFP, the agency found that its proposal failed to do so in a clear and understandable manner. We think the agency's conclusion was reasonable, and that it reasonably downgraded Mangi's proposal on this basis.³ See HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5 (an offeror is responsible for affirmatively demonstrating the merits of its proposal and risks rejection of its proposal if it fails to do so).

Mangi's Litigation Record

Mangi also challenges the agency's downgrading of its proposal based on the firm's litigation record. In this regard, the TEP noted that the current procurement stemmed from litigation brought by NWF over an EIS prepared by Mangi, and that another Mangi project (for the Rural Development Agency (RDA)) was currently under litigation. AR, Tab 13. Mangi asserts that the evaluation was improper because the agency allegedly ignored the firm's explanation that the NWF litigation was essentially not its responsibility, and because it was unaware that the agency would consider the RDA litigation without providing the firm an opportunity to respond.⁴

These assertions are without merit. With regard to the NWF litigation, since the RFP specifically provided for offerors to describe and list any environmental documents they had prepared that subsequently were the subject of litigation, and to indicate the outcome of the litigation (RFP at 37), the agency's consideration of these matters formed a legitimate and, thus, unobjectionable part of the technical capability evaluation. While Mangi disagrees with the agency's view on the firm's responsibility for the litigation, it had the opportunity to present its position and did so in its original and supplemental proposals. In this regard, an agency's past performance evaluation may be based on a reasonable perception of inadequate prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 5. The fact that Mangi disagrees with the agency's

³ In contrast, we note that the agency found that GMI's proposal described a simple process with clear and concise methods and clearly set forth GMI's and its subcontractors' roles and responsibilities. AR, Tab 11, at 4, 11, 14. In evaluating GMI's proposal, the TEP noted that GMI offered "extremely qualified personnel and industry experts specializing in agricultural economics" and "clearly defined roles/responsibilities of prime and all subs"; and that "project management and project controls [were] clearly stated." AR Tab 10.

⁴ According to Mangi's original and revised proposals, the NWF litigation was based on the failure of the EIS to focus on haying and grazing. Mangi Proposal at 17; Revised Proposal at 8. According to Mangi, it was at the agency's direction that Mangi did not address these issues in preparing the EIS. Id.

judgment is not sufficient to establish that the evaluation was unreasonable.

Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. With regard to the RDA litigation, to the extent Mangi was unaware that one of its RDA projects involved litigation, the RFP specifically stated that offerors would be provided an opportunity to address unfavorable past performance information if the information were the determining factor preventing a proposal from being placed in the competitive range. RFP at 38. Since Mangi's proposal was included in the competitive range, under the terms of the RFP, the agency was not required to bring the RDA matter to the firm's attention.⁵

In our view, the agency reasonably evaluated Mangi's proposal as technically incapable with unsatisfactory past performance.

SELECTION DECISION

Noting that GMI's revised price was higher than the price in its original proposal (which was initially selected for award), and that its own price was substantially lower, Mangi questions the award decision. Specifically, Mangi maintains that it was unreasonable for the agency to make award to GMI at an additional price premium (over its original price) rather than make award to Mangi at its significantly lower price.

Our review of an agency's price/technical tradeoff decision is limited to a determination of whether it was reasonable and consistent with the evaluation criteria enunciated by the solicitation. Construction Tech. Labs., Inc., B-281836, Apr. 12, 1999, 99-1 CPD ¶ 71 at 11. An agency properly may select a higher-priced, higher-rated offer where doing so is consistent with the evaluation criteria, and the agency reasonably determines that the superiority of the higher-priced offer outweighs the price difference. National Toxicology Labs., Inc., B-281074.2, Jan. 11, 1999, 99-1 CPD ¶5 at 7.

Here, as discussed above, the agency rated Mangi's proposal as incapable under the technical factor and unsatisfactory under the past performance factor. The source selection statement noted that an incapable rating indicated that the offeror's submittal failed to meet most of the requirements; its responses were considered irrelevant, incomplete, and/or unclear; deficiencies were considered major or extensive requiring major revisions; and there was no reasonable likelihood of

⁵ We reach the same conclusion with regard to Mangi's related argument challenging the agency's consideration of its alleged record of cost control issues on previous work for FSA. To the extent Mangi was unaware of the agency's issues with its cost controls, since the firm's proposal was included in the competitive range, according to the plain terms of the RFP, the agency was not required to bring the matter to Mangi's attention.

success. AR, Tab 16, at 7. In contrast, GMI's proposal was evaluated as very capable, which indicated that it met the stated requirements with no omissions, and was deemed comprehensive, clear and relevant, with little or no risk that the offeror would fail to meet the RFP's requirements. Id. The source selection statement specifically noted GMI's 4 years of FSA experience, with outstanding past performance on projects similar in complexity and scope, lack of litigation in over 800 projects, clearly stated project management and controls, and its extremely qualified personnel and industry experts. Id. Further, the SSA approved the contract specialist's determination that Mangi's substantially lower price, viewed together with its proposal's incapable technical rating, posed a performance risk.⁶ Based on the evaluation record provided by the TEP and the specialist's award recommendation, which outlined the technical and price differences among the three proposals, the SSA concluded that GMI's proposal represented the best value. We find no basis to object to the agency's conclusion.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁶ While Mangi asserts that the agency improperly found its low price to be risky--based on the agency's alleged misunderstanding of the firm's lean overall corporate structure and innovative and more efficient approach--since, as discussed above, we have found that the agency reasonably evaluated Mangi's technical proposal as incapable, we have no basis to question the agency's related assessment of performance risk based on its low price.