



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: American Cybernetic Corporation

File: B-310551.2

Date: February 1, 2008

Harry Steinberg for the protester.

Mary C. Schaffer, Esq., and David T. Copenhaver, Esq., Department of the Treasury, Bureau of the Public Debt, 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

Protest against agency's evaluation of protester's proposal is denied where record shows allegations are without merit, or that alleged evaluation errors did not result in competitive prejudice to the protester.

DECISION

American Cybernetic Corporation (ACC) protests the award of a contract to Svanaco, Inc. d/b/a as American Eagle under request for proposals (RFP) No. BPD-CSB-07-CI-0001, issued by the Department of the Treasury, Bureau of the Public Debt on behalf of the United States Chemical Safety and Hazard Investigation Board (CSB), for website redesign and hosting services. ACC, which submitted a significantly higher-priced proposal, challenges the evaluation of its proposal and the agency's "best value" determination that resulted in the award to Svanaco, which submitted the highest technically rated, lowest-priced proposal.

We deny the protest.

The RFP, as amended, provided for the award of a fixed-price contract under the General Services Administration Federal Supply Schedule for a base period, with four 1-year options, for a contractor to redesign CSB's public use internet website and external hosting activities. RFP at 3, 6, 13. CSB is an independent federal agency responsible for investigating industrial chemical accidents and the CSB website, hosted internally on a server at CSB headquarters, is an important tool for informing the public about the agency's activities and disseminating safety

information. The RFP included a detailed performance work statement that set forth a detailed listing of tasks and deliverables required. Id. at 6-13.

Proposals were to be evaluated on a “best value” basis considering the following factors: (1) technical approach; (2) past performance; (3) personnel qualifications; (4) quality assurance plan; and (5) price. RFP at 18-20. The non-price factors when combined were stated to be approximately equal to price, and offerors were advised that price would become more important as proposals became technically more equal. Id. at 18.

Proposals were received from four firms, including ACC and Svanaco, which were evaluated by the agency’s technical evaluation team, using an adjectival rating system which was not disclosed in the solicitation. The consensus evaluation and technical rankings were as follows:

Factor	Svanaco	Offeror A	Offeror B	ACC
Technical Approach	Highly Satisfactory	Satisfactory	Satisfactory	Satisfactory
Past Performance	Highly Satisfactory	Highly Satisfactory	Satisfactory	Highly Satisfactory
Personnel Qualifications	Outstanding	Marginal	Marginal	Satisfactory
Quality Assurance Plan	Outstanding	Satisfactory	Satisfactory	Satisfactory
Ranking	1	2	3	4
Total Price	\$351,680	\$697,995	\$388,240	\$789,300

Agency Report exh. 11, Award Recommendation; Contracting Officer’s Statement (COS) at 1-2. The contracting officer reviewed the evaluation findings and made award to Svanaco, finding that Svanaco’s proposal—which was the highest-rated and lowest-priced offer received—represented the best value to the government. In doing so, the contracting officer concluded that the two highest-priced proposals, while technically acceptable, were too expensive to justify an award regardless of their technical score. COS at 2. After a debriefing, ACC filed this protest.

ACC raises a number of objections to the evaluation of its proposal under each evaluation factor. According to the protester, its proposal was evaluated “in a manner that evidences a poorly structured, subjective, and ill-designed evaluation process, which did not offer a predefined variable measurement matrix with technically sound measurement constructs having a uniform evaluative process.” Protest at 1-2.¹

¹ To the extent, ACC alleges that the RFP did not specifically disclose the relative weights of the evaluation factors or the use of an adjectival rating system, these allegations are untimely. A protest based upon alleged improprieties in a solicitation (continued...)

The agency provided a detailed report in response to the protest that specifically addressed each of ACC's numerous arguments. In its comments responding to the report, ACC simply states that the agency's report "further substantiates the claim which was originally submitted by the protester" but provides no specific rebuttal to any of the agency's explanation. Protester's Comments. We have reviewed the agency's substantive response to the protester's initial allegations and, in the absence of any evidence or arguments to the contrary from the protester, we have no basis to conclude that the agency's evaluation was unreasonable. Industrial Prop. Mgmt., B-291336.2, Oct. 17, 2003, 2003 CPD ¶ 205 at 5.

Moreover, we think the record shows that there was no prejudice to ACC arising from any alleged evaluation errors. In this regard, even if we assume that ACC's proposal should have been assigned the highest possible rating under each non-price factor, based on the record, we see no reasonable possibility that the contracting officer would have concluded that ACC's proposal was worth paying more than twice the price of Svanaco's proposal, or the proposal of the second-lowest-priced, similarly-rated offeror. Prejudice is an essential element of every viable protest, and where none is shown or is otherwise evident, we will not sustain a protest. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

The protest is denied.

Gary L. Kepplinger
General Counsel

(...continued)

apparent prior to the time set for receipt of proposals and filed after award, as in this case, is untimely, and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2007).