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Decision

Matter of: Carahsoft Technology Corporation; Allied Technology Group

File: B-311241; B-311241.2

Date: May 16, 2008

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DIGEST

Protests are sustained where, in a competition for human resources services Federal Supply Schedule contracts, the contemporaneous record fails to adequately document the basis for the agency's decision to exclude compensation management services from the awards made to the protesters, and the agency's explanation of its reasoning, in its responses to the protests, is inconsistent with the limited contemporaneous record.

DECISION

Carahsoft Technology Corporation and Allied Technology Group protest the decision not to include services for compensation management in the award of Federal Supply Schedule (FSS) contract modifications to each of them by the General Services Administration (GSA) under request for proposals (RFP) No. 2FYA-AR-060004-B for human resources and equal employment opportunity services worldwide.¹ The protesters object that GSA unreasonably excluded

¹ We recognize that this protest relates to the modification of the protesters' existing FSS contracts, and that usually contract modifications are matters of contract administration beyond the review of our bid protest function. Here, however, the modification involves significant changes to the scope of the existing FSS contracts, and these requirements have been procured in an open competition under an RFP. In addition, GSA has not disputed our jurisdiction to decide these protests. In fact, another offeror, whose situation is not otherwise relevant to the protest, did not previously hold one of these FSS contracts and received a new contract as a result of this competition. Contracting Officer's (CO) Statement at 5.

compensation management services from their contracts based on flawed evaluations.

We sustain the protests.

BACKGROUND

GSA issued the RFP as a solicitation for commercial items on May 21, 2007 as “Refresh 7” to Schedule 738X, which is the human resources and equal employment opportunity services schedule. As part of this latest iteration of Schedule 738X, GSA added two new Special Item Numbers (SINs), designated as SIN 595-22 and SIN 595-26.

GSA explained that the objective of the solicitation is to establish FSS contracts under which agencies can procure services from private sector firms that are capable of establishing and operating human resources (HR) shared service centers (SSC). CO Statement at 2. These new SINs covered “Private Shared Service Center[s] for Core HR Services” and “Private Shared Service Center[s] for non-Core HR Services.” Among the new services was performance of compensation management (primarily payroll processing, frequently referred to as payroll). The RFP anticipated the award of FSS contracts with a base period of 5 years, followed by three 5-year option periods.

The RFP provided that personnel action processing, compensation management, and benefits management were the three “core” services, and that nine other types of services were “non-core” services. RFP at 99-102.

The proposal process had two stages. First, offerors were required to submit written proposals (limited to 150 pages for the technical volume). Those offerors whose written proposals were evaluated as acceptable were then provided instructions for a “technical and functional operational capability demonstration (OCD).” RFP at 134. The purpose of the demonstration was to “provide Selected Offerors the opportunity to demonstrate the capability of their proposed solution,” and to “ask Offerors to demonstrate several specific requirements by running specific test cases using pre-defined data, and then [have] Offerors . . . demonstrate a number of additional requirements at [their] choosing from the list of self-evaluation requirements” in 24 hours spread over 3 days. RFP at 138. In recognition of the extensive requirements, the RFP also addressed the depth and focus of the demonstration:

[GSA] understands that Selected Offerors may not be able to demonstrate all the elements of their solution and technical environment. After Offerors demonstrate the mandatory elements specified by the Federal government as part of the [demonstration], Selected Offerors are free to select elements to demonstrate, and the order in which they are presented At the same time, Selected

Offerors should bear in mind that in evaluating the risk associated with the Selected Offeror's approach and solution, the Federal government will consider that there is a greater risk associated with items that are described but not demonstrated.

RFP at 139.

In addition to setting forth various evaluation factors, the RFP provided that "[a]wards will be made to those responsible Offerors whose proposals conform to the solicitation and are advantageous to the Federal government based on technical merit, cost/price realism and other factors specified in this solicitation." RFP at 133; see also RFP at 137 (similar statement). In response to offeror questions, GSA later clarified that "[a]ll offers that are technically acceptable and meet standard GSA Multiple Award Schedule award criteria will be awarded [contracts]." Agency Report (AR), Tab 6, Responses to Vendor Questions, June 7, 2007, at 1.

Ultimately five offerors submitted proposals, including Carahsoft and Allied. Although Carahsoft and Allied were seeking an award of the HR SSC services as modifications to their FSS contracts, the firms both submitted the same technical approach, and used the same subcontractors: Avue and Ceridian. Both proposals described the use of an established bidirectional interface with the United States Department of Agriculture, National Finance Center (NFC), for many functions, including payroll processing. E.g., AR, Tab 26, Allied Proposal, vol. II, at 21; Tab 27, Carahsoft Proposal, vol. II, at 21. The proposals also made clear that the firms were offering to provide compensation management services through the established NFC payroll interface managed by Avue. As an "alternative," both proposals also offered the services of Ceridian, a private payroll service provider.²

Consistent with the two-step proposal process in the RFP, GSA concluded that both firms had submitted satisfactory written proposals, and the firms were then invited to participate jointly in a demonstration, along with their subcontractors.

² The proposals referred to Ceridian's services as "an additional choice" or "the Ceridian option." AR, Tab 26, Allied Proposal, vol. II, at 81; Tab 27, Carahsoft Proposal, vol. II, at 81. See also AR, Tab 26, Allied Proposal, vol. II, at 80; Tab 27, Carahsoft Proposal, vol. II, at 80 ("Avue brings the . . . expertise of Ceridian Corporation . . . as an alternative payroll solution . . .").

While there is some dispute about the content of the demonstration,³ there is no dispute that Carahsoft and Allied did not demonstrate the payroll processing function using GSA's sample data. The firms did, however, spend "two to three hours" of the demonstration establishing the functionality of Ceridian's federal payroll processing using other sample data, which Ceridian developed for use in demonstrating its systems to prospective commercial customers.⁴ Protester's Comments at 3; Declaration of Avue Chief Executive Officer at 6 & attach. C (screen shots of payroll presentation from demonstration).

After the demonstrations, the CO met with the other members of the technical evaluation panel (TEP) from December 5 to 7, 2007. His handwritten notes, evidently taken during that meeting, include criticisms of the protesters. While somewhat jumbled, on one page the notes refer to rejecting the protesters on compensation management, to rating them "red," and to down-selecting them because Ceridian did not perform a demonstration. Supplemental (Supp.) AR, Tab 28, Handwritten Notes, at 6 (dated "12/6/07").

Approximately 2 weeks later, on December 18, the TEP prepared a "final report and award decisions" presentation, consisting of 107 slides. GSA emphasizes that the TEP report (the presentation slides) embodies the "consensus opinion of the evaluation team" (of which the CO was a voting member), and is the "final product of the evaluators' decisions." Letter from GSA to GAO, Apr. 24, 2008, at 2.

³ This dispute exists because there is no contemporaneous documentation of the demonstration process: GSA did not record audio or video of the demonstration, and the evaluation record is incomplete. GSA "acknowledges that not all of the OCD [demonstration] evaluation documents were retained because the final product of the evaluators' decisions was the 107-page final TEP report." Letter from GSA to GAO, Apr. 24, 2008, at 2.

⁴ The protesters have argued that before the demonstration, they informed an unnamed official at GSA that the payroll portion of the demonstration would use sample data created for commercial customers, rather than GSA's pre-defined sample data. The protesters also contend that the GSA official raised no objection to this approach. However, the protesters have been unable to identify the GSA official who was contacted, and they have produced no record of such a communication. In contrast, the GSA officials responsible for this procurement have specifically denied that they were told in advance that the protesters would not demonstrate the payroll function using GSA's pre-defined sample data, and denied that they advised that it would be acceptable to demonstrate this function using other data. Under these circumstances, we do not believe that the protesters have established that such a communication took place.

In the report, the TEP assigned color ratings (green, yellow, orange, red⁵), and risk ratings (high, moderate, low) to each evaluation factor and subfactor. Past performance was rated either very good or satisfactory. The Carahsoft and Allied proposals (which were rated together), received the following ratings:

Factor/Subfactor	Rating	Risk
Technical Capability & Approach	Yellow	Moderate
-- Architecture & Integration	Yellow	Moderate
-- Fed Security Standards	Green	Low
-- Hosting	Green	Low
-- Deployment Approach	Green	Moderate
-- Service and Support	Green	Low
-- Quality Control	Green	Moderate
Management Capability and Approach	Yellow	Moderate
-- Project Mgmt Approach	Yellow	Moderate
-- EVMS	Green	Low
-- Compliance & Mgmt Const.	Green	Low
Functional Capability and Approach	Yellow	Moderate
-- Features & Functionality	Yellow	Moderate
-- Change Management	Red	High ⁶
-- Training	Yellow	Moderate
-- Capability of the Solution	Yellow	Moderate
Corporate Capability & Past Performance	Green	Low
-- Provider Profile/ Corp. Cap.	Green	Low
-- Past Performance	Green	Low
-- Client references	Satisfactory	Low

AR, Tab 21, TEP Report, at 72.

⁵ The evaluator score sheets provided for four ratings of green (acceptable), red (unacceptable), and “NR” (not rated; item was neither demonstrated nor discussed). Yellow and orange are not listed. A fourth rating, with no color given, was listed as “Needs Improvement,” the definition of which noted that “Offeror will need to be re-evaluated by the end of the ‘get well’ period.” Supp. AR, Tab 29, Evaluation Form, at 1. The “get well” period was to be the first year after award, in which each contractor was required to address identified issues (referred to as “deficiencies”).

⁶ Although the TEP gave the protesters a “red” rating and “high” risk for change management, this issue apparently did not affect the decision to exclude compensation management from the protesters’ awards. Rather, GSA provided the protesters with a “get well” issue requiring them to “[p]rovide a written change management plan for customers that includes an assessment of [DELETED].” AR, Tab 21, Final TEP Report, at 104; Declaration of Avue Chief Executive Officer, attach. D, Contract Award Document, at 4.

The ratings were followed by several slides with narrative comments for each offeror, and several more slides with issues to be addressed in the “get well” period. In the narrative slides, the TEP provided the following comments regarding the “Yellow” and “Moderate Risk” ratings for “Capability of the Solution: Core HR Functions,” including compensation management:

- Functionality for Avue’s proposed Time & Attendance system . . . was described with some capability demonstrated; however, no Federal-specific requirements were demonstrated.
- Though an interface from the . . . Time & Attendance system to NFC ePayroll is currently in production for a Federal client, the . . . product is currently a stand-alone application, and was not linked to Avue’s proposed payroll processing solution (Ceridian) at the Functional [demonstration].
- No operational capability for the Ceridian payroll solution was demonstrated at the Functional [demonstration].

Id. at 95.

The TEP report then recommended that Carahsoft and Allied⁷ receive an award (that is, modification of their existing FSS contracts) for personnel action processing and benefits management services (under the core services SIN 595-22), and all non-core services (under the non-core services SIN 595-26). While the TEP report omitted compensation management from the award recommendation for the protesters, the report did not provide any reasons for the exclusion.

On December 20, GSA awarded Schedule 738X contract modifications to both Carahsoft and Allied, but excluded compensation management services under SIN 595-22. Each contract stated that the firm was being awarded personnel action processing and benefits management services (under SIN 595-22), and all non-core services (under SIN 595-26). However, each award also stated that the firm “is not awarded Core Compensation Management services[.]” Appended to each award document was a list of “get well” items to be completed within 1 year of award, none of which related to the core compensation management services. Declaration of Avue Chief Executive Officer, attach. D, Contract Award Document, at 4. The record here shows that only one offeror received an award for core compensation management services.

⁷ The TEP report actually “recommends that Avue be awarded [a] GSA schedule.” Since Avue was a subcontractor to Carahsoft and Allied, this recommendation was understood as a recommendation to award contracts to those firms instead. AR, Tab 21, TEP Final Evaluation and Award Decisions, at 104.

When Carahsoft and Allied received the award notification, they were informed that compensation management had been excluded from their contracts. The firms objected to the exclusions and requested a debriefing.

GSA debriefed Carahsoft and Allied on January 23, 2008. The firms then submitted a letter to GSA objecting to the agency's decision to exclude compensation management services from their contracts. On January 31, 2008, GSA denied the protesters' request to have compensation management added to their contracts. Specifically, GSA explained:

The reason that the TEP [Technical Evaluation Panel] recommended that your firm not be awarded Compensation Management is that Carahsoft, and its subcontractors Avue and Ceridian, failed to properly complete the functional Operational Capabilities Demonstration (OCD) for the payroll portion, as required in the Functional OCD instructions that were sent to you on October 24, 2007, several weeks before the demonstrations were scheduled.

[T]his lack of a payroll demonstration . . . led the TEP to conclude there was a high degree of risk in awarding your firm Compensation Management.

AR, Tab 24, Letter from GSA to Carahsoft, Jan. 31, 2008, at 1-2.

These protests followed.

DISCUSSION

Fundamentally, the protesters argue that the contemporaneous record provided no support for GSA's positions that their proposals to provide compensation management services were evaluated as either high risk or technically unacceptable, or otherwise failed to meet the RFP standards for award.⁸ More specifically, the protesters point to the TEP final report, showing that despite the written notes of the TEP meeting on December 6, in the final evaluation consensus on December 18 the

⁸ Specifically, the protesters argue that the record does not adequately document a reasonable basis for: (1) the alleged unacceptability of the firms' proposals for compensation management, (2) the application of various instructions in the RFP concerning the demonstration, (3) the application of the award criteria in the RFP, (4) and the proper use of a "get well period." With regard to the technical evaluation, the protesters also argue that GSA overlooked their proposal to provide payroll through the NFC, and ignored information in their written proposals and demonstration.

protesters received a yellow rating (the second highest rating) for their functional capability and approach, which encompasses compensation management.

In responding to the protest, GSA argues that it was reasonable to exclude compensation management services from the protesters' awards. In explaining its actions, GSA first argued to our Office that "the TEP . . . conclude[d] that there was a high degree of risk in awarding [the protesters] Compensation Management," and that the "Contracting Officer agreed with the TEP." AR at 3. When the protester questioned the absence of support in the record for this position, our Office asked GSA to supplement its report. In doing so, GSA produced the CO's handwritten notes of the TEP meeting in early December. In its supplemental report, GSA argued that after the CO's meeting with the TEP on December 7, the CO "then exercised independent judgment in assessing [the protesters as] 'red,' which translated into technically unacceptable and therefore 'high risk.'" Supp. AR at 2.

When the protester continued to challenge GSA's position, GSA asked to submit a further response, and our Office agreed. GSA's third response on this issue appears to shift the agency position again. In essence, GSA now argues that instead of the CO exercising his independent judgment to assess the protesters "red" (or unacceptable), the TEP itself had implicitly found the protesters technically unacceptable, but without explicitly so stating:

[T]he fact that the TEP did not include Compensation Management in its award recommendation can only mean one thing: for that SIN [sic] they were not found technically acceptable.

Letter from GSA to GAO, Apr. 24, 2008, at 3-4.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. However, for our Office to perform a meaningful review, the record must contain adequate documentation showing the bases for the evaluation conclusions and source selection decision. Panacea Consulting, Inc., B-299307.4, B- 299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3-4. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al. Sept. 6, 2007, 2008 CPD ¶ 28 at 12.

In our view, the record here is inadequately documented to show the reasonableness of GSA's decision to exclude compensation management from the protesters' awards. Additionally, GSA's arguments in this protest appear inconsistent with the contemporaneous record of the TEP conclusions. While the TEP's conclusions are fairly general, they do not assign the protesters a "high risk," a "red" rating, or any

other rating indicating technical unacceptability for any aspect of compensation management. In addition, there is no record that the contracting officer arrived at a reasoned independent judgment regarding rating, risk, or acceptability of the protesters' proposals under the RFP criteria at any time after the December 18 TEP report, which assigned a rating of "yellow" and "moderate risk" to these proposals. The TEP report itself is otherwise silent on the basis for implicitly excluding compensation management from the awards.

In attempting to address the lack of any discussion of how the TEP evaluated the protesters' approach to compensation management, GSA argued that "[s]ince there was no demonstration of the protesters' ability to perform using GSA supplied data, there was nothing for the TEP to evaluate or discuss with respect to the award of Compensation Management." Supp. AR at 2-3.

We think GSA's argument is not supported by the record. In the RFP, and again in the additional instructions provided before the demonstration, GSA sought significant information about how offerors would provide compensation management services. Very simply, while it is undisputed that the protesters did not demonstrate the Ceridian product using GSA's sample test data, both protesters provided information on their compensation management approach in their written proposals, and demonstrated the functions of their private payroll processing subcontractor using commercial data.⁹ In light of this, we fail to see a reasonable basis for GSA's position that there was nothing for the TEP to evaluate, and, in fact, the contemporaneous summary ratings given in the final TEP report suggest that GSA did not find the protesters' approach unacceptable. Moreover, we think the argument that these proposals provided nothing to discuss or evaluate is both inaccurate and unfair, and is belied by the record.¹⁰

In summary, we conclude that GSA's decision to exclude compensation management services from the protesters' awards is not reasonably supported by either the contemporaneous record or the agency's explanations during this protest. Accordingly, we need not reach the specific issues raised by the protesters concerning the evaluation of their proposals and the meaning of specific provisions in the RFP.

⁹ We note again that the RFP is a solicitation for commercial items.

¹⁰ For the record, and at GSA's urging, we have reviewed the CO's handwritten meeting notes (created approximately 2 weeks before the TEP final report). These notes do not conclusively demonstrate that the CO was exercising independent judgment to assess the protesters as "red," or explain any reasons for doing so. There is also nothing in the record to explain why these notes should take priority over the later-prepared TEP consensus report—especially when we note that the CO was a member of the TEP.

The protests are sustained.

RECOMMENDATION

The protesters contend that our Office should recommend that GSA award the core compensation management services to the protesters. We disagree with the protesters with regard to the proposed remedy. As indicated above, GSA has argued here that these proposals are technically unacceptable. While we have found this conclusion to be unsupported by the contemporaneous record, we will not evaluate proposals anew or substitute our judgment for that of the agency. GSA evaluators, not our Office, should determine whether the protesters meet the criteria for award, based on a full consideration of the written proposals and the demonstrations here.

We recommend that GSA reevaluate the protesters' proposals consistent with this decision, and make a new award decision for each of the protesters, adequately documenting the agency's conclusions on these points. In doing so, GSA should ensure that its evaluation takes into account the content of both the written proposal and the demonstration provided, as measured against the instructions provided in the RFP, and the evaluation criteria. If the failure to retain documentation of the earlier demonstration leads GSA to conclude that an additional partial demonstration is needed in order to determine technical acceptability, it should promptly arrange one. We also recommend that the agency reimburse the protesters for the reasonable costs of filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2008). The protesters' certified claims for costs, detailing time expended and costs incurred, must be submitted directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

Gary L. Kepplinger
General Counsel