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Decision

Matter of: Spherix, Inc.

File: B-294572.3; B-294572.4

Date: October 20, 2005

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Tuma, Esq., and Mary Ita Snyder, Esq., Gibson, Dunn & Crutcher, for
ReserveAmerica NY, Inc., the intervenor.

Mark G. Garrett, Esq., Department of Agriculture, for the agency.

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Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest sustained where several significant technical discriminators in the cost/technical tradeoff justifying award lacked a reasonable basis.
 2. Agency misled protester regarding the propriety of offering alternative implementation plan that did not comply with the solicitation requirements when it recognized a strength in the awardee's proposal for making such a proposal while specifically advising the protester that the required implementation plan was that stated in the solicitation.
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DECISION

Spherix, Inc. protests the award of a contract to ReserveAmerica NY, Inc. under request for proposals (RFP) No. WO-04-06VM, issued by the Department of Agriculture, Forest Service, for the National Recreation Reservation Service (NRRS). This protest follows a decision by our Office, Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3, sustaining Spherix's protest of the agency's previous award to ReserveAmerica under this RFP, and the agency's subsequent request for and evaluation of revised proposals. Spherix's present protest challenges the agency's conduct of discussions, evaluation of revised proposals, and latest source selection decision.

We sustain the protest.

BACKGROUND

Historically, the various reservation, sales, permitting and ticketing processes for public use of recreational facilities and activities located on federal lands (e.g., national parks, national monuments, recreation areas, wilderness areas, and historic sites) have been separate operations under the management of a number of federal agencies. Most recently, two major federal reservation systems have operated, i.e., the National Park Reservation Service (NPRS) under the National Park Service, Department of Interior, and the NRRS under the Forest Service in partnership with the U.S. Army Corps of Engineers and the Bureau of Land Management, Department of Interior. Spherix is the incumbent contractor for the NPRS and ReserveAmerica is the incumbent contractor for the NRRS.

The RFP is part of an “E-Government Initiative,” under which the government seeks to consolidate its reservation systems for all federal parks and federal recreation areas, facilities and activities into the NRRS with the goal of providing “one-stop” reservation shopping. The RFP seeks a solution that improves the existing reservation service through a contractor-developed, -provided and -operated state-of-the-art reservation system with a web-based portal that will include multiple sales channels (telephone call center, Internet, and “walk-up” at the recreation site/activity), providing “one-stop” reservation shopping directly to the public for camping, tours, tickets, permits, activities, and recreation-related sales, as well as providing general recreation and trip planning information about all federal recreation areas. The system would also provide administrative and field personnel of federal land management agencies with the ability to access and manage reservation and recreation information. RFP § C, Performance Work Statement (PWS), at 64-71.¹

To satisfy the requirements outlined above, the PWS required the contractor to provide and staff a web-based central reservation system (CRS) that supports seamless interfacing with other portals for third party sales, and which includes an Internet sales channel capable of presenting customers with large quantities of information on participating recreation facilities and activities and completing reservation and other recreation related sales and services. RFP § C, at 89-91. In addition, the contractor is to provide an on-site “application” for field and kiosk sales channels that provide “secure, real-time and off-line reservation and other recreation related service management capability” at field locations. RFP § C, at 92. With regard to the required offline capability, the RFP stated:

The contractor shall provide alternative methods for operating the field reservation sales channel sites during emergency and other situations

¹ Pages in documents contained in the agency’s report have been stamped with sequential numbering, which is used in our citations to these documents as well.

that result in disruption of service. This offline or other capability must allow field sites to operate the field program independently from the CRS for an indefinite period of time, and to process and complete field transactions in an accurate, efficient and timely manner. The contractor shall provide the capability to receive and send data to CRS as soon as the emergency is resolved.

RFP § C.5.2.2.2, at 92-93.

The RFP, issued March 25, 2004, contemplated the award of a multi-year fixed-unit-price requirements contract with 6 yearly options. A detailed PWS was provided, describing the services and capabilities required. The stated basis for award was a cost/technical tradeoff using the following evaluation factors listed in descending order of importance:²

1. Technical Approach
2. Management Approach
3. Reservation System Demonstration
4. Past Performance
5. Price

RFP § M, at 199. The first four factors were stated to be significantly more important than price, and the RFP stated that the government intended to make award based primarily on technical merit, although price would become more important as the difference in technical merit narrowed. Id.

The agency received four proposals in response to the RFP, three of which the agency included in the competitive range. The agency conducted discussions with and heard oral presentations from the competitive range offerors, which included reservation system demonstrations. On August 9, 2004, after evaluating final revised proposals, the agency selected ReserveAmerica's higher-rated proposal as the best value to the government, and awarded a contract to ReserveAmerica based on a cost/technical tradeoff at a higher price than Spherix's proposal.

Spherix protested the award. Our Office sustained the protest because the agency's selection decision was based in part on an evaluated difference in information provided by the offerors concerning staffing and marketing approach that was neither requested by the RFP nor fairly considered by the agency, and because the agency's discussions with Spherix failed to address significant evaluated weaknesses in that firm's proposal. Spherix, Inc., supra, at 8-15. We recommended that the

² For each technical evaluation factor, the RFP identified numerous subordinate evaluation criteria, which were stated to be of equal importance to each other. RFP § M, at 199.

agency reopen the competition to amend the RFP, if appropriate, and reopen discussions, request proposal revisions, evaluate the revised proposals, and make a new source selection decision. Id. at 16. Additionally, we identified several protest-related issues for the agency to consider in implementing the recommended corrective action: state estimated quantities in the price schedule; advise the source selection authority of significant differences in past performance of the offerors; and revisit the evaluation of ReserveAmerica's proposed implementation plan. Id. at 15-16.

The agency subsequently amended the RFP and reopened the competition with the three competitive range offerors. Agency Report, Tab 10, Technical Proposal and Analysis Report (TPAR), June 15, 2005, at 290. The agency conducted discussions and additional on-site reservation system demonstrations, and requested proposal revisions. Following its evaluation of revised proposals, the agency narrowed the competitive range to the proposals of Spherix and ReserveAmerica, conducted additional discussions, and requested final proposal revisions. Id. at 292.

The source selection evaluation team (SSET) evaluated the revised final proposals. The SSET essentially found that both offerors proposed reservation system solutions were technically acceptable and considered "excellent/moderate risk." The primary difference in the evaluation ratings was under the third most important factor, the reservation system demonstration. Spherix received [DELETED] rating under this factor in part because it had not demonstrated in either of the two system demonstrations some aspects of the system that it had proposed to provide. ReserveAmerica received [DELETED] rating under this factor because it was found to have provided more complete demonstrations of its proposed system. Under the remaining factors, the SSET gave both proposals the same ratings. Overall, the SSET rated Spherix's proposal as "good/moderate risk" and rated ReserveAmerica's proposal as "excellent/low risk." Agency Report, Tab 12, SSET Summary Consensus Memorandum, at 392-99.

The SSET presented its final evaluation ratings to the SSA. The information considered by the SSA included the technical, past performance, price analysis, consensus, and best value analysis reports prepared by members of the SSET and the contracting officer. Agency Report, Tab 16, Source Selection Decision, at 468. For various clearly stated reasons, the SSA modified the SSET's evaluation of ReserveAmerica under the past performance factor to lower the rating [DELETED.] Id. at 468-69. Although this change in factor rating did not prompt the SSA to lower ReserveAmerica's overall technical rating, it did prompt him to raise the firm's overall proposal risk rating from "low" to "moderate" for the following reason:

[DELETED.]

Id. at 469.

The final evaluation ratings, as modified by the SSA, appear below:

| Factor | Spherix | ReserveAmerica |
|-------------------------------|---------------------------|--------------------------------|
| Technical Approach | [DELETED] | [DELETED] |
| Management Approach | [DELETED] | [DELETED] |
| System Demonstration | [DELETED] | [DELETED] |
| Past Performance | [DELETED] | [DELETED] |
| Overall | Good/Moderate Risk | Excellent/Moderate Risk |
| Scenario A Price | \$ [DELETED] | \$97,226,972 |
| Scenario B Price ³ | \$ [DELETED] | \$ [DELETED] |

Id. at 469-70.

The source selection decision then compared the following aspects of the two proposals where ReserveAmerica’s proposal was considered superior and which the SSA considered significant: (1) continuity of operations in the event of a service disruption at the contractor’s facility; (2) offline operations capability at agency field locations in event of a loss in communications between the field and the contractor’s central system; (3) web-based reservation services software; (4) solution for providing wilderness permits and quota management, especially for the Boundary Waters Canoe Area Wilderness (BWCAW); (5) inventory management; (6) approach to notifying customers of emergency closure of recreation resources; (7) web reservation volume capability; and (8) ease of use and functionality of reservation system. Id. at 470-76. A recurring difference appearing in this comparative assessment of the proposals was that ReserveAmerica’s proposal was for applications or capability that currently exists as compared to Spherix’s need to develop or acquire them. Nevertheless, the SSA and the SSET considered this to be a very close competition and difficult selection decision. Hearing Transcript (Tr.) at 227, 421-22, 429. Ultimately, however, the SSA determined that the evaluated advantages of ReserveAmerica’s proposal outweighed Spherix’s lower price, and selected ReserveAmerica’s proposal as representing the best value to the government. Agency Report, Tab 16, Source Selection Decision, at 477.

On June 17, 2005, the agency awarded a contract to ReserveAmerica and, following a debriefing, Spherix filed this protest.⁴ The protester stated a large number of bases

³ As was the case during the previous protest, the RFP requested price proposals for two different pricing scenarios: Scenario A had separate unit prices for call center and Internet reservations while Scenario B had the same unit price applicable to both types of reservations; however, award would be made for only one scenario. RFP amend. 1, §§ B.2, B.5, at 231-32. Here, the agency made award under Scenario A. Agency Report, Tab 16, Source Selection Decision, at 477.

supporting its protest allegation that the agency's evaluation was unreasonable. We find that the agency's evaluation was unreasonable for the reasons stated below.

DISCUSSION

In reviewing a protest of an agency's evaluation and source selection decision, we will not re-evaluate proposals, but will review the record to determine whether the evaluation and selection decision are reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws and regulations. M&S Farms, Inc., B-290599, Sept. 5, 2002, 2002 CPD ¶ 174 at 6.

Field Control of Inventory

The agency unfairly and unreasonably evaluated the proposals on the feature of field control of inventory. Both offerors proposed a capability that would permit field locations to have full control of all types of inventory. Agency Report, Tab 26, ReserveAmerica's Final Revised Proposal, at 915-17; Tab 39, Spherix's Final Revised Proposal, at 1809-12, 1969-70. The agency stated that Spherix's proposed inventory management capability focused on campground inventory and did not address tours and ticketing. Agency Report, Tab 16, Source Selection Decision, at 474. That statement is inconsistent with the terms of Spherix's proposal, which states that its inventory management capability applies to both recreation facilities and recreation activities. Agency Report, Tab 39, Spherix's Final Revised Proposal, at 1809. The agency also stated that Spherix did not quantify how much control would be granted to field sites. Agency Report, Tab 16, Source Selection Decision, at 474. This also is inconsistent with the terms of Spherix's proposal, which stated [DELETED].⁵ Agency Report, Tab 39, Spherix's Final Revised Proposal, at 1969-70. These misstatements formed the basis for inventory control being one of the discriminators

(...continued)

⁴ The protest was filed within 5 days of a required debriefing, and, as required by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d)(3), (4) (2000), the agency suspended contract performance. Subsequently, the agency prepared a written determination that performance of the contract during the pendency of the protest was in the best interests of the United States. 31 U.S.C. § 3553(d)(3)(C).

⁵ Spherix indicated that [DELETED]. Agency Report, Tab 39, Spherix's Final Revised Proposal, at 1969-70. Although both offerors recommended against implementing full field control of inventory (which would bypass quality control safeguards that both offerors proposed, such as central review of field changes prior to activation of those changes), Spherix additionally addressed mitigating the risks of implementing field control. Compare id. at 1810, 1969-70 with Tab 26, ReserveAmerica's Final Revised Proposal, at 917.

in the SSA's tradeoff analysis. Agency Report, Tab 16, Source Selection Decision, at 474.

Offline Capability

The evaluation also treated offerors unreasonably and unequally with respect to offline capability, another discriminator in the SSA's tradeoff analysis. As indicated above, there was a requirement for offline capability that the contractor's system had to provide for field sites in the event of a disruption in connection with the central system. RFP § C.5.2.2.2, at 92-93.

The source selection decision stated that an advantage of ReserveAmerica's offline capabilities was that, once connectivity was re-established, there would be an automatic uploading of data captured during offline operations, which reduces the workload on agency personnel because they will not have to maintain a separate means to capture customer information or conduct business. Agency Report, Tab 16, Source Selection Decision, at 471-72. Moreover, the SSA testified that he was under the impression that ReserveAmerica offered automatic uploading of data captured during offline operations and that Spherix did not offer automatic uploading of data. Tr. at 210. In fact, Spherix did offer automatic uploading of data in its final proposal as part of its offline solution. Agency Report, Tab 39, Spherix's Final Revised Proposal, at 1913-14.

In addition, the source selection decision stated that ReserveAmerica's offline solution "lessened the impact on field and customers in less than ideal circumstances," and that this was one of several benefits that added value to ReserveAmerica's proposal, such that award at a higher price than Spherix's was justified. Agency Report, Tab 16, Source Selection Decision, at 477. However, the record indicates that Spherix's proposal apparently offered more offline capabilities than ReserveAmerica's. For example, ReserveAmerica's proposal for offline operations did not provide for recording of cash sales in the field program, but rather the agencies' field personnel would have to manually record cash transactions while offline and enter them once connection with the central system resumed. Intervenor's Hearing Comments at 32; Agency Report, Tab 10, TPAR, at 308; Tab 26, ReserveAmerica's Final Revised Proposal, at 904-906; Tr. at 26. Spherix's proposed offline solution did provide this capability. Agency Report, Tab 39, Spherix's Final Revised Proposal, at 1802-04, 1912. Therefore, it appears that ReserveAmerica's proposal, rather than Spherix's, would result in more work for agency personnel at least in this regard, requiring them to maintain a separate means to capture cash purchases and then to enter that data into the system once real-time connections are re-established.

Similarly, ReserveAmerica’s proposal expressly stated that it would not provide for the offline issuance of BWCAW permits.⁶ In contrast, Spherix’s proposal did not take exception to providing offline permit capability.⁷ This too seemingly gives Spherix rather than ReserveAmerica an advantage with regard to the “impact on field and customers in less than ideal circumstances.”⁸

It is true that the SSA could reasonably give more credit to ReserveAmerica—as it did under the offline operations discriminator—to the extent that its system demonstrations of its offline features were superior to Spherix’s or to the extent that it had already developed its offline solution and Spherix had not. Nevertheless, for the reasons stated above, the record otherwise shows that the SSA had an incorrect understanding of ReserveAmerica’s and Spherix’s relative strengths under this significant discriminator in the cost/technical tradeoff analysis.

Alternative Implementation Plan

ReserveAmerica, in addition to proposing to transition all participating agencies to its reservation system (known as the Outdoor Recreation Management Solution (ORMS)) by the “go-live” date, also proposed an alternative implementation plan under which it would [DELETED]. Agency Report, Tab 26, ReserveAmerica’s Final

⁶ ReserveAmerica’s proposal stated the following:

Due to the multiple geographic locations for the BWCAW Permit issuing stations, the requirements for offline capability have not been included within our response. Should offline capability be desired, it would require additional discussion to further define user specification of needs. We will work with the NRRS to determine the specific functionality required and a timeframe for delivery.

Agency Report, Tab 26, ReserveAmerica’s Final Revised Proposal, at 910 (emphasis added).

⁷ Elsewhere, the source selection decision specifically recognized the significance of the BWCAW requirements in the overall contract in stating, “Although the number of overall permit transactions for the BWCAW is small, when compared to the overall number of NRRS transactions, the impact to customers seeking to use this protected wilderness could be extensive without a fully developed and operational permit management service for all NRRS sales channels.” Agency Report, Tab 16, Source Selection Decision, at 473.

⁸ As is apparent from our discussion here, and our discussion below regarding the interpretation of the offline requirement, Spherix proposed more offline capabilities than ReserveAmerica. However, the agency’s evaluation did not identify this apparent advantage in Spherix’s proposal.

Revised Proposal, at 946. The SSET considered this a positive aspect of ReserveAmerica's proposal and evaluated it as a strength. Agency Report, Tab 10, TPAR, at 298, 350. We noted in our prior decision that the goal of the acquisition is to consolidate all of the many reservations systems at the participating agencies into a single system, and that [DELETED] appeared inconsistent with the RFP. Spherix, Inc., supra, at 16. The agency did not modify any of the numerous corresponding terms of the RFP, nor advise offerors that [DELETED]. In fact, Spherix asked whether the agency was "requiring a one-time deployment of the entire system" or would consider a phased implementation, to which the agency stated the following:

The objective of this acquisition is to provide one centralized reservation service that is seamless to the customer. The goal is to provide "one-stop" reservation shopping to the public for a wide range of Federal recreation areas, facilities, and services. Any proposed solution must meet this objective and all RFP requirements.

As stated in RFP [§ C.1.4.8] Project Implementation Planning, an implementation plan shall include phase-in of reservation services including transition to the "go-live" date and beyond. Offerors are expected to mitigate any risks associated with the delivery of the consolidated NRRS through their proposed implementation approach and strategies.

Agency Report, Agency's Responses to Questions (Feb. 9, 2005), attach. 1, at 1301. In our view, Spherix reasonably interpreted this response [DELETED]. Protester's Hearing Comments at 119-20. While the agency states that it did not make an award on the basis of ReserveAmerica's alternative plan, the plan nevertheless was evaluated as a strength in that firm's final evaluation and the agency's actions misled Spherix so as to preclude it from obtaining a similar evaluation strength. The agency needs to determine what its actual needs are on this issue and take steps to ensure that all offerors compete on the same basis.

Conclusion

In sum, we sustain the protest because the agency did not fairly consider the relative similarities and differences in the two proposals that were expressly taken into account and regarded as discriminators between the proposals in the source selection decision. The agency has repeatedly acknowledged that this was a very close and difficult best-value tradeoff determination. Tr. at 227, 421-22, 429. Therefore, any change in the relative evaluation of the offerors could result in a different firm being selected for award. Spherix, Inc., supra, at 13. The agency needs to revise its evaluation and make a new source selection decision. Additionally, since the agency considers ReserveAmerica's alternative implementation plan a strength and misled Spherix in a way that prevented it from proposing a similar plan, the agency needs to reopen discussions and ensure that all offerors are competing on the same basis before proposal revisions are requested and evaluated. See 4th

Dimension Software, Inc.; Computer Assocs. Int'l, Inc., B-251936, B-251936.2, May 13, 1993, 93-1 CPD ¶ 420 at 9.

OTHER ISSUES

The record causes some reason to question whether the agency has fairly stated the evaluated difference between proposals in other areas, particularly under the “ease of use” discriminator stated in the source selection decision. Agency Report, Tab 16, Source Selection Decision, at 475-77. The source selection decision stated that the actual solution proposed by Spherix is “unknown” because the screens and features that Spherix would ultimately customize for the agency were not demonstrated. *Id.* at 476. Spherix’s proposal essentially stated [DELETED]. Agency Report, Tab 39, Spherix’s Final Revised Proposal, at 1765-75. At the hearing, the software consultant retained by ReserveAmerica confirmed that this type of customization was simple, once the basic system, such as the infrastructure and database, was in place. Tr. at 368-69, 372-73. He compared the difficulty of changing the look and operation of an existing screen that is seen by the end-user to picking which shirt or tie to wear, and that to give much consideration to this superficial aspect of the system was “silly.” Tr. at 369. Thus, it appears on this record that the source selection decision may have exaggerated ReserveAmerica’s relative strength in this area. In this regard, it appears that, as the incumbent NRRS contractor, ReserveAmerica was permitted to customize its ease-of-use features during the incumbent contract, which may explain the agency’s greater appreciation for the general look and feel of that firm’s system. See Protester’s Hearing Comments, attach. 17, Government Computer News Article (Jan. 27, 2003).

The record also reflects confusion about the requirement for offline capability. The protester essentially alleges that the solicitation required that all field program capabilities that can be performed independent from the CRS be available while offline. The agency and intervenor state that the offline capability requirement is minimal and that the contractor’s offline system must only be able to process and complete local sales with no requirement for a capability for other normal field operations. While the solicitation is not entirely clear on this point, we believe that the protester’s interpretation is the more reasonable one. In this regard, the RFP establishes a requirement without limitation that “the field program” for this application have the capability of operating offline, that is, independently from the CRS, during disruptions in service for an indefinite period of time, and to “process and complete field transactions.” Among the requirements that could be accomplished offline are the capability to “record cash/check purchases” and to “print and/or distribute, permits and tickets.” RFP § C.5.2.2.2, at 93. As discussed previously, ReserveAmerica did not provide the former capability, and took exception to the latter capability for BWCAW permits, whereas Spherix provided for these capabilities in its offered offline approach. Since we otherwise sustain the protest, we need not resolve this issue, but we believe that the agency should examine its actual needs and revise the RFP to clearly state its offline requirements.

RECOMMENDATION

We recommend that the agency reopen discussions, request revised proposals, and make a new source selection decision. If an offeror other than ReserveAmerica is selected for award, the agency should terminate ReserveAmerica's contract and make award to that other firm.⁹ We also recommend that the agency reimburse the protester its cost of pursuing this protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d) (2005). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

⁹ Consistent with the requirement of CICA regarding the impact of an agency's decision to override the automatic stay of performance on "best interests" grounds, as occurred here, our recommendation is made "without regard to any cost or disruption from terminating, recompeting, or reawarding the contract." See 31 U.S.C. § 3554(b)(2).