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Decision

Matter of: IAP World Services, Inc.

File: B-297084

Date: November 1, 2005

Michael R. Charness, Esq., and Amy R. Napier, Esq., Vinson & Elkins LLP, for the protester.

William A. Roberts, Esq., Philip J. Davis, Esq., Richard B. O’Keeffe, Esq., Michael S. Caldwell, Esq., and Antonella Karlin, Esq., Wiley Rein & Fielding LLP, for EJB Facilities Services, Inc., an intervenor.

Richard G. Welsh, Esq., and Amy M. Steed, Esq., Naval Facilities Engineering Command, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation provided for the relative weighting of evaluation factors in the evaluation, rather than mere review for acceptability, agency properly considered extent to which proposals exceeded solicitation requirements.
 2. Protest that agency failed to hold meaningful discussions with protester is denied where protester’s proposal was rated at least acceptable under all evaluation categories, and protester does not point to any specific item that agency failed to discuss that kept protester from having a reasonable chance of receiving award.
 3. Where agency determined that protester’s price was reasonable, agency was not required to inform protester during discussions that its price was significantly higher than prices of competing offerors and government estimate.
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DECISION

IAP World Services, Inc. protests the award of a contract to EJB Facilities Services under request for proposals (RFP) No. N44255-04-R-0003, issued by the Department of the Navy for base operations, security and maintenance for specified facilities in the Navy’s Northwest Region. IAP principally asserts that the agency applied unstated evaluation criteria and failed to provide meaningful discussions.

We deny the protest.

The solicitation, which included definite-quantity and indefinite-delivery/indefinite-quantity (ID/IQ) items, provided for a “best value” evaluation based on three technical factors—management, past performance/experience, and small business subcontracting (in descending order of importance)—and price (which was approximately equal in weight to the technical factors taken together).

The agency received four proposals, including the protester’s and the awardee’s. A technical evaluation board (TEB) evaluated the technical proposals using adjectival ratings (exceptional, highly acceptable, acceptable, marginal or unacceptable), and a price evaluation board (PEB) evaluated the price proposals for overall price, reasonableness, realism and completeness. The TEB and PEB prepared reports for the source selection board (SSB), which made an award recommendation to the source selection authority (SSA). Following two rounds of discussions and the receipt and evaluation of final proposal revisions, EJB’s proposal was rated highly acceptable for the management and past performance factors and excellent for small business subcontracting. SSB Report (July 20, 2005) at 2. IAP’s proposal was rated acceptable for management and small business subcontracting and highly acceptable for past performance. *Id.* EJB’s evaluated price (\$405,270,348) was low, and IAP’s (\$451,341,289) third low. *Id.* at 30. The agency ranked EJB’s proposal first overall and IAP’s fourth based on the technical and price proposals. SSA Decision at 4. The SSB recommended EJB for award; the SSA concurred and made award to EJB.

UNSTATED EVALUATION CRITERIA

IAP asserts that the Navy improperly applied unstated evaluation criteria in evaluating the technical proposals. Specifically, IAP asserts that, while the RFP provided for technical proposals to be evaluated to ensure that the offeror understands the solicitation requirements, the Navy evaluated the technical proposals based on whether the offeror exceeded the stated requirements or used innovation in responding to them. IAP maintains that this resulted in the improper upgrading of EJB’s proposal evaluation.

Where a solicitation indicates the relative weights of evaluation factors, as opposed to providing for selection of the lowest-priced, technically acceptable proposal, the agency is not limited to determining whether a proposal is merely technically acceptable; rather, proposals may be evaluated to distinguish their relative quality by considering the degree to which they exceed the minimum requirements or will better satisfy the agency’s needs. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 *et al.*, Dec. 6, 1996, 97-1 CPD ¶ 41 at 5-6; Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29 at 6-7. Here, as the solicitation provided for award on the basis of factors whose relative weights were disclosed, the Navy properly could consider in its evaluation both the extent to which proposals exceeded the RFP requirements and the extent to which offerors used innovative measures to respond

to those requirements. The fact that EJB's proposal received favorable evaluation consideration on these bases thus is unobjectionable.

DISCUSSIONS

IAP asserts that the Navy's discussions with IAP were not meaningful because it failed to discuss proposal weaknesses and deficiencies that left IAP's proposal rated only acceptable for seven of nine subfactors under the management factor. IAP further asserts that the Navy improperly failed to inform the firm that its proposal failed to provide innovative solutions or to exceed the solicitation requirements. IAP cites one specific item in this latter regard--its excessive staff, which, according to IAP, substantially inflated its proposed price.

Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. In this regard, we will review the discussions provided to ensure that the agency pointed out weaknesses that, unless corrected, would prevent the offeror from having a reasonable chance of receiving the award. An agency is not required to afford offerors all encompassing discussions or to discuss every element that receives less than the maximum score, and is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 4.

IAP does not point to any weakness or deficiency that prevented its proposal from being considered fully acceptable or otherwise from having a reasonable chance of receiving the award. Nor does our review of the record show that any such weaknesses or deficiencies existed. Rather, the evaluation record reveals that in the final evaluation the TEB found only one minor weakness (regarding pre-final inspections) in TEB's entire technical proposal.¹ TEB Report, attach. 3, at 3-7. Regarding IAP's belief that the agency should have discussed its excessive staffing, the agency did not find the staffing level excessive or a weakness or deficiency; rather, it found that IAP's staffing level was realistic. SSB Report at 19. The award was ultimately made to EJB, not because IAP's proposal was deficient, but because

¹ In the comments IAP submitted on September 30 in response to the agency report, IAP for the first time asserts that the Navy should have discussed with IAP its concern regarding IAP's willingness to accept pre-final inspections more than 30 days before a programmed vacancy. Since IAP learned of this concern on August 11, when the agency supplied IAP with an advance copy of its debriefing, but did not raise the issue until more than 10 working days after the debriefing, this argument is untimely. See 4 C.F.R. § 21.2(a)(2) (2005). In any case, as noted, the agency considered this concern to be only a minor weakness.

EJB's contained several elements that the agency found superior, that is, advantageous to the government. SSB Report at 32-34; SSA Decision at 1-7. Thus, since there were no weaknesses or deficiencies that kept IAP's proposal from being fully acceptable, or from otherwise having a reasonable chance of being selected for award, the agency was not required to provide more extensive discussions; it was not obligated to discuss additional areas simply because the proposal did not receive the highest possible rating in those areas. American Ordnance, LLC, B-292847 et al., Dec. 5, 2003, 2004 CPD ¶ 3 at 5.

IAP also complains that the Navy improperly failed to inform IAP that its proposed price was too high. In this regard, IAP notes that its proposed price was substantially higher than both the government estimate (by 34 percent) and EJB's price (by 21 percent) for the definite-quantity elements of the RFP, and 39 percent higher than EJB's price for the ID/IQ elements.²

Where an offeror's price is high in comparison to competitors' prices or the government estimate, the agency may, but is not required to, address the matter during discussions. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 5 n.5. Thus, if an offeror's price is not so high as to be unreasonable and unacceptable for contract award, the agency reasonably may conduct discussions without advising the offeror that its prices are not competitive. Id.; cf. Creative Info. Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 7 (price nearly 7 times the government estimate and 4.6 and 9 times competitors' prices is unreasonable on its face). Here, the agency determined that IAP's overall price was reasonable for the work to be performed and for what IAP proposed, SSB Report at 19, and the price difference, even as calculated by IAP, is not of a magnitude that suggests that IAP's price was unreasonable on its face. See Grove Resource Solutions, Inc., supra (agency not required to discuss protester's high price where awardee's price was about 40 percent lower). Under these circumstances, the Navy was not required to raise the matter of IAP's higher price during discussions.

ADDITIONAL ISSUES

IAP also challenges EJB's past performance and price realism evaluations, arguing in the latter regard that a proper evaluation would have demonstrated that both EJB's proposal and the second lowest priced proposal were unrealistic. However, since IAP's proposal was ranked only fourth overall, and its arguments concern only EJB and one of the intervening offerors, the other intervening offeror (whose price was higher than IAP's, and thus not subject to IAP's realism argument) would be in line for award ahead of IAP even if we found merit in these arguments.

²The agency computes a smaller price difference: 23 and 15 percent higher than the government estimate and EJB's proposed price, respectively, for the definite-quantity elements, and 8 and 6 percent higher for the ID/IQ items.

Under these circumstances, IAP is not an interested party to raise these issues. See 4 C.F.R. § 21.1(a); JAVIS Automation & Eng'g, Inc., B-290556.2, Aug. 9, 2002, 2002 CPD ¶ 145 at 6.

The protest is denied.

Anthony H. Gamboa
General Counsel