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Decision

Matter of: Commercial Design Group, Inc.

File: B-400923.4

Date: August 6, 2009

Patricia Meagher, Esq., Rossi & Meagher LLP, for the protester.
M.P. Singh, Bara Infoware, Inc., for the intervenor.
Isaac Johnson, Jr., Esq., United States Coast Guard, for the agency.
Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation provided for award to offeror submitting lowest-priced, technically acceptable proposal, protest that agency improperly conducted discussions with offerors other than protester is denied where protester's proposal had already been found technically acceptable and protester was given the opportunity, like all other offerors, to submit a revised proposal after discussions had concluded.
 2. Protest challenging evaluation of proposals is denied where the record establishes that the agency's evaluation was reasonable and consistent with the solicitation.
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DECISION

Commercial Design Group, Inc. (CDG), of San Francisco, California, protests the award of a contract to Bara Infoware, Inc., of San Ramon, California, by the United States Coast Guard under solicitation No. HSCG88-08-R-623190, for computer-aided design services.

We deny the protest.

This protest is CDG's second challenge to an award under this solicitation. CDG first protested the agency's decision to award a contract to another firm under this solicitation in December 2008, on the basis that the awardee's proposed personnel did not meet the solicitation's minimum requirements with regard to experience with Autodesk AutoCAD and Graphisoft ArchiCAD, two software programs used in computer-aided design. That protest was dismissed by our Office on February 2,

2009, following the agency's decision to take corrective action consisting of reopening discussions, soliciting revised proposals, and conducting a new evaluation.

Consistent with that corrective action, on February 2, the agency issued a new competitive range determination and sent discussion letters to all offerors within the competitive range, including CDG, Bara, and four other offerors. The letters informed CDG and Bara that their proposals had not met the minimum requirements of the solicitation and requested additional information concerning the qualifications of their proposed personnel. Specifically, the letters reiterated the solicitation's requirement that proposed personnel have a "[m]inimum of Intermediate AutoCAD skill level as demonstrated by [a] certificate from an AutoCAD certified training center or 6 years full-time working experience with Autodesk AutoCAD and Graphisoft ArchiCAD," and requested that the offerors provide resumes for each proposed employee demonstrating compliance with the requirements, as well as a supplemental statement detailing how the proposed individuals met the requirements. Agency Report (AR) Tab 5, CDG Discussion Letter at 1-2. The agency received responses from all offerors.

In late February and early March, the agency conducted an initial evaluation of the offerors' responses to the discussion letters, and summarized the results in technical evaluation reports. The reports state that CDG's response successfully demonstrated that each of its proposed personnel met the minimum requirements of the solicitation, but that all other offerors, including Bara, failed to provide sufficient information to demonstrate whether their proposed personnel met the solicitation requirements. AR, Tabs 10, 11, Technical Evaluation Reports; Agency Supp. Response, June 26, 2009 at 2. After reviewing these results, the agency undertook further exchanges with all offerors except CDG, in order to clarify whether the resumes of the proposed personnel submitted by those offerors met the solicitation's requirements. Following these exchanges, on March 17, the contracting officer prepared a technical review which indicated that, in addition to CDG, Bara and two of the four other offerors had demonstrated that their proposed personnel met the requirements of the solicitation and that their proposals were technically acceptable.

On March 24, the contracting specialist sent notices to each technically acceptable offeror, indicating that discussions were concluded and that final proposal revisions were due by April 10. Each of those offerors submitted a revised pricing proposal by the due date. Neither CDG or Bara revised their technical proposal.

Of the four offerors that submitted final revised proposals, Bara submitted the lowest-priced proposal and CDG submitted the second lowest-priced proposal. All offerors were informed that Bara was the apparent successful offeror on April 13, and the award was made to Bara on April 22. CDG received a written debriefing on April 27, and answers to additional questions on April 29. CDG then filed this protest on May 1. CDG alleges that Bara's response to the agency's February 2 discussion letter was insufficient to demonstrate that Bara met the minimum requirements of

the solicitation; the agency's additional exchanges with Bara amounted to improper discussions; and even considering the information that Bara provided during the alleged improper discussions, Bara still failed to demonstrate that all of its proposed personnel met the solicitation's requirements.

We first address the allegation of improper discussions. CDG states that up to the point of the agency's evaluation of the offerors' responses to the February 2 discussion letters, all offerors were treated fairly and equally. However, CDG argues that the exchanges after that point, which took place between the agency and all offerors other than CDG, constituted discussions under Federal Acquisition Regulation (FAR) § 15.306(d), and were therefore required to include all offerors.¹ CDG argues that this agency conduct clearly demonstrates that the agency was favoring other offerors over CDG by allowing revisions to technical proposals after the February 13 response date.

While we agree that the exchanges in question constituted an additional round of discussions under FAR § 13.506(d), see Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6, under the circumstances here, we fail to see how the discussions were unfair to CDG or how CDG was prejudiced by the agency's action. The solicitation provided for a low-priced/technically acceptable competition and a pass/fail evaluation of technical proposals. Solicitation at 33. Accordingly, "technically acceptable" was the highest available technical rating, and a proposal rated technically acceptable could not be further improved. CDG's proposal was rated technically acceptable after the agency's initial evaluation of the responses to the February 2 discussion letters. AR, Tab 10, CDG Technical Evaluation Report. Therefore, because it was not possible for CDG to improve its technical proposal after the initial evaluation, the agency's subsequent discussions with offerors whose proposals were not technically acceptable did not deprive CDG of any opportunity afforded to other offerors in the competition. Further, CDG was not deprived of the opportunity to make revisions to its proposal had it chosen to do so, as all offerors were directed to submit final revised proposals after they were informed that the discussions period had closed on March 24.² AR, Tab 14, Request for Final Proposal Revisions. Thus, given the circumstances here, the challenged discussions do not provide a basis for our Office to sustain the protest. See Rosemary Livingston-- Agency Tender Official, B-401102.2, July 6, 2009, 2009 CPD ¶ __ at n.9; Heritage Garden Ctr., Inc.; S.C. Jones Servs., Inc., B-248399.4, Oct. 28, 1992, 92-2 CPD ¶ 290

¹ FAR § 15.306(d)(1) states that "[d]iscussions are tailored to each offeror's proposal, and must be conducted with each offeror in the competitive range."

² FAR § 15.307(b) states that "[a]t the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions."

at 5.

CDG next alleges that even in light of the information provided during discussions, Bara failed to demonstrate that one of its proposed personnel met the minimum requirements of the solicitation. Specifically, CDG asserts that the working experience of one of Bara's proposed personnel is inadequately documented, and that the record does not support the conclusion that the individual has 6 years full-time working experience with Graphisoft ArchiCAD, as required by the solicitation.

The record shows that, in response to its February 2 discussion letter, Bara submitted new resumes for each of its proposed personnel. The new resume of the individual challenged by CDG stated that he had "6 years of experience in Graphisoft ArchiCAD," and listed 12 years of professional experience consisting of work at four design and building firms. AR, Tab 9, Bara Response, at 9. However, work experience with ArchiCAD was only referenced specifically in the most recent of the four professional experience entries, which accounted for slightly less than 2 of the 12 years of the individual's work history. Id.

In the initial evaluation of Bara's response to its discussion letter, the agency's technical evaluator concluded that the resume in question provided insufficient information to demonstrate whether the proposed individual had the required 6 years experience with ArchiCAD, and found the resume unacceptable. AR, Tab 11, Bara Technical Evaluation Report. This issue was then the subject of additional oral discussions between Bara and the agency contract specialist and technical evaluator. During these discussions, Bara stated that the individual met the ArchiCAD requirement through his work at [DELETED] from 2001 to 2006, and at [DELETED] from 2006 to 2007. AR, Tab 12, Discussions Documents, at 2. Bara followed up its oral statement with one in writing, stating that "[f]rom 2001 to 2006 [the individual] worked with [DELETED], where he first used ArchiCAD," and that "[f]rom 2006 to 2007 he worked for [DELETED], where he used AutoCAD and ArchiCAD extensively." Id. at 6.

After the discussions, the contract specialist asked the technical evaluator to reevaluate Bara's proposed personnel. The technical evaluator responded by email stating that all proposed personnel other than the challenged individual appeared acceptable. With regard to the challenged individual, the technical evaluator was concerned with Bara's statement that "[f]rom 2001 to 2006, he worked with [DELETED], where he first used ArchiCAD." Id. The technical evaluator concluded that this statement was not clear as to when the individual began using ArchiCAD and that "if he started using ArchiCAD as early as 2001 to 2003, then okay, but not if he didn't begin using until 2004." Agency Supp. Response, June 26, 2009, Email message dated Mar. 11, 2009. On March 17, contracting officer conducted an independent review of the technical proposals. With regard to Bara, the contracting officer stated that the technical evaluator had found in many areas that the information provided with the resumes was not sufficient, but that after additional exchanges, "Bara Infoware provided supporting documentation that demonstrated

that each of the [proposed personnel] met the minimum requirements of the solicitation.” AR, Tab 13, Contracting Officer’s Technical Review at 1. The contracting officer concluded, “It is my determination that the proposal is acceptable and no further action is necessary.” Id.

CDG argues that because, as noted by the technical evaluator, the resume of the challenged individual does not state when he began using ArchiCAD during his employment with [DELETED] from 2001 to 2006, Bara failed to demonstrate that the individual has 6 years of experience with ArchiCAD as required by the solicitation. Accordingly, CDG asserts that the contracting officer’s determination was inadequately documented and unsupported by the record, and that the contracting officer improperly favored Bara by accepting Bara’s blanket statements of compliance with the solicitation’s requirements. We disagree.

The evaluation of proposals is a matter within the discretion of the contracting agency. 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. Panacea Consulting, Inc., B-299307.4, B-299308.4, July 27, 2007, 2007 CPD ¶ 141 at 3. Implicit in the requirement that the agency’s judgment be reasonable is the requirement that these judgments be documented in sufficient detail to show they are reasonable. FAR § 8.405-2; Advanced Tech. Sys. Inc., B-298854, Dec. 29, 2006, 2007 CPD ¶ 2 at 8.

Here, the record includes the challenged Bara employee’s resume, the contract specialist’s contemporaneous notes on her oral discussions with Bara, and Bara’s written statement detailing how its proposed employees met the solicitation’s requirements. We conclude that these three documents, taken together, represent more than a “blanket statement of compliance” as alleged by CDG, and are sufficient documentation to support the contracting officer’s determination. The documents identify four firms that the individual has worked with where he could have gained ArchiCAD experience, and further explain that the individual in fact did work with ArchiCAD at three of the four firms (his experience at which accounts for more than 8 years of his listed professional experience). The fact that the documents do not provide the exact date on which the individual began using ArchiCAD was properly noted by the agency’s technical evaluator. However, we do not agree that the absence of the exact date prevents the documents from demonstrating the required experience, where the documents provide that the individual used ArchiCAD at three firms, and that the individual’s work at those three firms accounts for over 8 years of professional experience. On that basis, we find that it was reasonably within the contracting officer’s discretion to conclude that the resume and additional statements provided by Bara demonstrated that the challenged individual possessed 6 years of experience with ArchiCAD, as required by the solicitation.

In its supplemental comments, CDG presented a new challenge to Bara's proposed personnel, essentially alleging that Bara materially misrepresented its proposed employees' experience with ArchiCAD.³ This challenge is based on affidavits submitted by a professional engineer retained by CDG as a consultant to assist it in this protest. In the affidavits, the consultant expresses skepticism regarding the claimed experience in the resumes of CDG's proposed personnel, based on the consultant's view that it is unlikely that certain work listed in the resumes would have been performed with ArchiCAD; on minor inconsistencies between the resumes and Bara's written statement; and on information obtained from Graphisoft's reseller that the proposed personnel and many of their prior employers do not have software licenses for ArchiCAD. See CDG Comments, June 11, 2009, Consultant Affidavit; CDG Supp. Comments, July 7, 2009, Consultant Affidavit. Relying on the views expressed in the consultant's affidavits, CDG asserts that there is "credible evidence" that it is "highly unlikely" that Bara's proposed personnel have the ArchiCAD experience claimed in their resumes and in Bara's supplemental statements. CDG Supp. Comments at 6. We disagree.

For a protester to prevail on a claim of material misrepresentation, the record must show that the information at issue is false. See, e.g., Gov't of Harford County, Md., B-283259, B-283259.3, Oct. 28, 1999, 99-2 CPD ¶ 81 at 11. Here, CDG has failed to submit evidence to support such a showing with regard to Bara's proposed personnel. While the affidavits on which CDG relies express the consultant's doubts as to the experience of Bara's proposed personnel, they do not identify any specific statement in the resumes or written statement as a misrepresentation. Rather, the affidavits essentially represent the consultant's opinions based on general information obtained by the consultant. In our view, that type of information and opinion, without any claim to specific knowledge as to the information submitted by Bara, or any assertion (with supporting evidence) of a specific misrepresentation, is insufficient to support a claim of material misrepresentation with regard to the resumes, which are in good order on their face, or Bara's written statement.

The protest is denied.

Daniel I. Gordon
Acting General Counsel

³ In fact, CDG did not unequivocally assert that Bara materially misrepresented the relevant experience of its proposed personnel, but requested a hearing to determine whether a material misrepresentation occurred. Given our conclusions that the agency reasonably found Bara's proposed personnel acceptable and, as discussed below, the information on which CDG bases its argument fails to reasonably support a challenge to the veracity of the relevant documents, we saw no need to conduct a hearing.