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Decision

Matter of: SRA International, Inc.

File: B-410973; B-410973.2

Date: April 8, 2015

Scott E. Pickens, Esq., Barnes & Thornburg LLP, for the protester.
Peter L. Wellington, Esq., Thomas P. Barletta, Esq., and Anthony Rapa, Esq.,
Steptoe & Johnson LLP, for CACI Inc.-Federal, the intervenor.
Marie Cochran, Esq., General Services Administration, for the agency.
Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency held unequal discussions in a best-value procurement is sustained where the record shows that prior to the source selection decision, the agency engaged in discussions with only the awardee and allowed only the awardee to submit a final proposal modification.

DECISION

SRA International, Inc. (SRA), of Fairfax, Virginia, protests the General Services Administration's (GSA) issuance of a task order to CACI Inc.-Federal (CACI), of Chantilly, Virginia, under task order request for proposals (RFP) No. GSC-QFOB-14-32836, for information technology services in support of a web-based supply chain management system. SRA contends that the agency engaged in unequal discussions.

We sustain the protest.

BACKGROUND

On June 24, 2014, GSA issued the RFP under GSA's Alliant Government-Wide Acquisition Contract (GWAC). The RFP seeks offerors to provide information technology services in support of a web-based supply chain management system for the United States Department of Agriculture (USDA) and the U.S. Agency for

International Development (USAID).¹ The system provides an integrated, internet-based commodity acquisition, tracking, and distribution system for agencies, customers, vendors, suppliers, and transportation personnel in support of domestic and international USDA and USAID food and nutrition programs. RFP at C-1.

Award was to be made on a best-value basis considering the following evaluation factors (in descending order of importance): technical approach, key personnel and project staffing, past performance, management approach, and cost.² The non-cost factors, when combined, were significantly more important than cost. RFP at M-3.

With regard to the key personnel and project staffing factor, the RFP instructed offerors to complete a staffing table template included with the solicitation. RFP at L-12 (referencing AR, Tab J, RFP Attachment BB-Project Staffing Plan Template). The template instructed offerors to “[p]rovide for the Base Period and all Option Periods.” AR, Tab K, RFP Attachment BB - Project Staffing Plan Template. With regard to costs, the RFP provided that the agency would evaluate the cost proposals of offerors whose technical proposals received an overall rating of acceptable. Since this was a cost reimbursable contract, the solicitation stated that the evaluation of cost proposals would include an analysis of the cost realism of offerors’ proposals. RFP at M-1.

The agency received seven proposals, including those of CACI and SRA (the incumbent contractor), by the August 14 closing date. Contracting Officer’s Statement (COS) at 1. Thereafter, the technical evaluation board (TEB) reviewed proposals and began its evaluation. Id. The contracting officer (CO), who served as the source selection authority for this procurement, did not read the proposals (other than the staffing plan tables) himself and did not participate in the TEB’s consensus discussions. COS at 4, 6. However, the CO states that he did observe the technical evaluation process and reviewed each offeror’s oral presentation DVD. Id. The agency conducted oral question and answer (Q&A) sessions with each offeror between September 11 and 19, during which each offeror was given the opportunity to respond to “clarification questions.” COS at 3.

The initial ratings of CACI and SRA were as follows:

¹ The value of the task order was \$196,446,637. As a result, this procurement falls within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite delivery/indefinite quantity (ID/IQ) contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

² The RFP also contained pass/fail technical criteria that are not relevant here. RFP at M-2 to M-3.

	CACI	SRA
Technical Approach	Excellent	Excellent
Key Personnel & Project Staffing	Excellent	Good
Past Performance	Excellent	Good
Management Approach	Good	Excellent

See AR, Tab 23, TEB Report, at 130; AR, Tab 17, TEB Chair’s Summary of Supplemental Evaluation, at 3-4.

As relevant here, the record reflects that SRA’s proposal was assessed a weakness under the key personnel and project staffing factor due to a lack of clarity and detail regarding the level of effort proposed in each of the option periods. TEB Report at 122. Specifically, the evaluators found that, while SRA’s proposal provided overall project labor hour totals by task, the proposal did not identify to which year specific personnel were assigned. Id. As a result, SRA’s proposal received a rating of good, rather than excellent, under this evaluation factor.

Between September 19 and November 20, the CO performed an analysis of CACI’s (and only CACI’s) proposed costs, including an analysis of CACI’s labor rates, cost and pricing assumptions, and escalation rates. COS at 8. The CO states that, during this time, he also “entered into negotiations with CACI, resulting in a significant (\$5.3M) reduction in price.” Id. at 9. Specifically, the record in this regard indicates that the CO opened discussions with CACI on October 13, and on October 15, CACI submitted a revised pricing proposal. AR, Tab 32, E-mail to CACI, October 13, 2014, and Response, October 15, 2014, at 1; AR, Tab 25, Source Selection Decision Document (SSDD), at 14. According to the CO, he did not enter into discussions or negotiations with any of the other offerors because, by that point, he had already selected CACI for award. See COS, Mar. 27, 2015, at 1.

The record, however, includes no documentation of any source selection decision prior to the commencement of discussions with CACI in October. In this regard, in response to GAO’s inquiries, the CO states that, aside from the final December 16 SSDD, “there is no other contemporaneous documentation of my evaluation or conclusion that CACI’s proposal represented best value (that is, documents created at the time these conclusions were reached).” COS at 1.

Further, the record appears to indicate that the evaluation continued up until November or December, well after the CO states that he selected CACI for award. According to the CO, he participated in several teleconferences with the TEB

between September 19 and November 20 in order to review the initial consensus ratings for all offerors against the initial consensus strengths, weaknesses, and risks. COS at 5. As a result of this process, on November 20, the TEB decided that CACI's past performance rating should be downgraded from excellent to good.³ AR, Tab 17, TEB Chair's Summary of Supplemental Evaluation, at 3-4. Several ratings of other offerors were also changed on November 20. *Id.* at 1-5. The agency's December 10 "pre-award briefing" slides state that the TEB reached consensus on November 20. AR, Tab 24, Pre-Award Briefing, at 8.

On December 16, the CO signed the source selection decision, selecting CACI for award at a "final negotiated price" of \$196,446,637. SSDD at 1, 33. As reflected in the source selection decision, the final ratings of CACI and SRA were as follows:

	CACI	SRA
Technical Approach	Excellent	Excellent
Key Personnel & Project Staffing	Excellent	Good
Past Performance	Good	Good
Management Approach	Good	Excellent
Proposed Cost	\$201,791,121 ⁴	\$201,826,763

SSDD at 5, 7. With regard to cost, The CO noted in the source selection decision that the proposed "pricing"⁵ of SRA and CACI were within 1 percent of each other, and accordingly concluded that they were "effectively equal." SSDD at 13; CO Statement at 7. The following day, on December 17, the TEB report was finalized. AR, Tab 18, E-mail from TEB Chair to CO, Dec. 17, 2014, at 1. After learning of the award decision and receiving a debriefing, SRA filed a protest with our Office.

³ In his statement in response to the protest, the CO states that he was aware, as of September 19, of the potential that CACI's past performance rating would be reduced. CO Statement at 5.

⁴ \$201,791,121 represents CACI's proposed cost prior to the CACI October "reduction in price."

⁵ The record indicates that the agency accepted the offerors' proposed costs without adjustment. The agency contends that, since it viewed the offerors' proposed costs as realistic, it was not required to calculate evaluated costs. SSDD at 9; Supp. AR at 10-11.

DISCUSSION

SRA contends that the agency engaged in unequal and improper discussions when it conducted discussions with CACI, but failed to conduct discussions with the other offerors, including SRA. Supp. Protest at 8-10. SRA asserts that, if it had been given the opportunity to engage in discussions, the firm could have supplied additional information regarding its staffing proposal, which would have led to a higher rating under this evaluation factor.⁶

When an agency conducts discussions with one offeror, it must conduct discussions with all offerors in the competitive range. Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2004 CPD ¶ 108 at 9. In addition, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. Federal Acquisition Regulation (FAR) § 15.306(d); Computer Sciences Corporation et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 23.

Here, the agency does not deny that it conducted discussions in October only with CACI.⁷ Rather, it contends that these discussions were appropriate because, prior to the discussions, the CO had already decided that CACI represented the best value to the government. Further, the agency notes that the solicitation provided

⁶ The protester also challenges several aspects of the agency’s evaluation and source selection. In addition, SRA complains that the agency engaged in unequal treatment when it conducted clarifications with CACI to allow the firm to supply missing information about its staffing costs, but did not allow SRA a similar opportunity to supply missing staffing information and instead assigned the firm’s proposal a weakness. Since we are sustaining the protest against the agency’s conduct of discussions with only one offeror, which will necessarily lead to conducting discussions with the other offerors and a request for revised proposals, followed by a new evaluation and tradeoff decision, we need not address the remainder of SRA’s protest allegations.

⁷ Specifically, the agency states that it conducted “negotiations” with CACI and allowed CACI to submit a revised cost proposal. SSDD at 31; Supp. AR at 6-7; CO Statement at 9. The term “negotiations” is synonymous with “discussions.” See FAR § 15.306(d) (“negotiations are exchanges . . . between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal”); Enterprise Solutions Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9 (“Discussions occur when an agency enters into negotiations with offerors . . . with the intent of allowing an offeror to revise its proposal”).

that, “[a]fter an offeror has been selected for award based upon a best value determination, the Government may negotiate a final reduced price.” RFP at M-1.

The record does not support the agency’s position. As noted, the CO’s statement that he concluded in October that CACI would be selected for award is not documented anywhere in the contemporaneous record. See COS, March 27, 2015, at 1 (no contemporaneous documentation of CO’s conclusion). On the contrary, the agency’s position in fact is inconsistent with the contemporaneous record.

The record shows that the CO’s purported selection of CACI occurred while the ratings of proposals (including that of CACI) were still being reviewed and modified. At the time of the October discussions with CACI, the TEB had not finalized its ratings, and the CO had not read the proposals to allow him to make a selection decision without relying on the evaluation conclusions of the TEB.⁸ See COS at 1. Specifically, the CO opened discussions with CACI on October 13, and on October 15, CACI submitted a revised pricing proposal. AR, Tab 32, E-mail to CACI, October 13, 2014, and Response, October 15, 2014, at 1; SSDD at 14. Nearly a month later, on November 12, the agency received further information regarding CACI’s past performance on two contracts. Agency E-mail to GAO, March 27, 2015, Attachs. 2, 3. After receiving this additional information, and more than a month after the CO began discussions with CACI, the TEB decided that the additional past performance information would result in a lowering of CACI’s past performance rating from a rating of excellent to a rating of good. See TEB Chair’s Summary of Supplemental Evaluation at 20.

On November 20, more than a month after the CO began conducting discussions with CACI, the TEB reached consensus regarding its evaluation. Id. at 4; Pre-Award Briefing, at 8 (“TEB Consensus Reached: November 20, 2014”). In addition to changes in CACI’s ratings, ratings for several other offerors were also changed on November 20. TEB Chair’s Summary of Supplemental Evaluation at 1-5. Finally, in late December 2014, more than two months after the CO began discussions with CACI, the TEB finalized its report and the Contracting Officer documented his selection decision. See AR, Tab 18, E-mail from TEB Chair to CO Finalizing TEB Report, Dec. 17, 2014, at 1; SSDD, Dec. 16, 2014; see Pre-Award Briefing, Dec. 10, 2014. During this time, the agency did not conduct discussions with any offeror, save CACI.

⁸ The agency apparently did not appoint a cost evaluation board. Rather, to the extent a cost evaluation was performed, it appears to be based on the CO’s own assessment of proposed costs and the TEB’s evaluation of offerors’ staffing levels in connection with its evaluation of the key personnel and staffing evaluation factor. See SSDD at 7-9; TEB Report at 38-39, 120-21.

An agency that fails to adequately document its evaluation of proposals or source selection decision bears the risk that its determinations will be considered unsupported, and absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its determinations. Clark/Foulger-Pratt JV, B-406627, B-406627.2, July 23, 2012, 2012 CPD ¶ 213 at 10. Here, we find that the agency's conduct of discussions with only one offeror, with no documentation that CACI had already been identified as the successful offeror, and two months prior to the documented source selection decision, while evaluation ratings were still being adjusted, constituted unequal, and therefore improper, discussions. In this regard, it is axiomatic that, in a best value procurement, if a procuring agency holds discussions with one offeror, it must hold discussions with all offerors and that, when holding discussions agencies may not engage in conduct that favors one offeror over another. Marathon Medical Corp., B-408052, June 4, 2013, 2014 CPD ¶ 162; FAR § 15.306(e)(1). Since the record shows that the agency engaged in pre-selection discussions with CACI in October, it was required to engage in discussions with all of the offerors regarding the areas of their proposals requiring amplification or revision.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). The agency argues that SRA has not suffered prejudice here because the selection decision was based on CACI's pre-discussions proposed cost, rather than its final negotiated cost. Supp. AR at 7. We reject this argument for two reasons.

As an initial matter, the SSDD is unclear regarding which cost figure--the original or the negotiated cost--formed the basis for the GSA's selection decision. See, e.g., SSDD at 1 ("Based on the information provided in this document, the . . . determination for award is to CACI . . . for the final negotiated price of \$196,446,637"), at 7-8 ("price analysis" on CACI's "total proposed price" of \$201,791,121), at 10 (citing CACI's "proposed price" of \$201,791,121), at 15 (Trade-off Analysis/Best Value Determination section listing both "originally proposed pricing" and "negotiated final pricing").

Moreover, in the case of unequal discussions, the focus of our inquiry is on whether the protester, had it been afforded meaningful discussions, could have revised its proposal in a manner that would result in a substantial chance of the protester receiving the award. See Piquette & Howard Electric Serv., Inc., B-408435.3, Dec. 16, 2013, 2014 CPD ¶ 8 at 10 (protester established that it was prejudiced by unequal discussions by demonstrating that, if afforded meaningful discussions, it would have lowered its price). Here, SRA contends that, had it been invited to engage in discussions, the firm would have provided additional detail regarding the

level of effort proposed in each of the option periods. SRA argues that this additional information would have eliminated the evaluated weakness under the firm's key personnel and staffing factor and, as a result, its revised proposal would have received an excellent rating under this subfactor, resulting in an overall advantage under the non-cost factors, with an essentially equal price. We resolve doubts regarding competitive prejudice in favor of the protester; where, as here, the protester has shown a reasonable possibility that it was prejudiced by the agency's action, we will sustain its protest. Piquette & Howard Electric Serv., Inc., *supra*, at 9. Since we find that the agency failed to engage in discussions with all of the offerors, and there is a reasonable possibility that SRA was prejudiced by this failure, the protest is sustained on this basis.

RECOMMENDATION

We recommend that GSA, in accordance with the FAR, establish a competitive range, open discussions with all offerors in that range, request final proposal revisions, evaluate revised proposals,⁹ and make a new source selection decision. If GSA selects another offeror for award, it should terminate its contract with CACI. We also recommend that SRA be reimbursed the costs of filing and pursuing its protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling
General Counsel

⁹ SRA also contends that the agency failed to perform a proper cost realism analysis of the offerors' proposals. In evaluating proposals under a cost-reimbursable contract, an agency must analyze the realism of offerors' proposed costs. The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3. Where, as here, a contract involves the provision of a large amount of labor, agencies are required to consider the realism of offerors' proposed labor rates as part of the realism analysis. Prism Maritime, LLC, B-409267.2, B-409267.3, Apr. 7, 2014, 2014 CPD ¶ 124 at 11. Here, it is unclear from the record the extent to which the agency considered the realism of offerors' proposed labor rates as part of its cost realism analysis. See SSDD at 15-32. Accordingly, the agency should consider performing a proper cost realism analysis of all of the offerors' proposals when implementing our recommendation.