



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Global Dynamics, LLC

File: B-413313; B-413313.2

Date: September 20, 2016

Edward J. Tolchin, Esq., Offit Kurman Attorneys at Law, for the protester.
Isaias “Cy” Alba IV, Esq., Michelle E. Litteken, Esq., Jacqueline K. Unger, Esq., and Megan C. Connor, Esq., PilieroMazza PLLC, for Loyal Source Government Services LLC, the intervenor.

Capt. Harry M. Parent, and Robert B. Neill, Esq., Department of the Army, for the agency.

Paula J. Haurilesko, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misled protester into raising its prices during discussions is denied where the agency merely advised the firm that its prices were lower than those of other offerors and asked the firm to review its prices.
2. Protest that agency erred in its tradeoff decision by failing to value the protester’s sole assessed strength is denied where the record shows the source selection authority acknowledged the strength but concluded it did not merit a price premium.

DECISION

Global Dynamics, LLC, of Columbia, Maryland, protests the decision by the Department of the Army not to award it a contract under request for proposals (RFP) No. W81K04-14-R-0001, for ancillary medical services. Global Dynamics maintains that the Army engaged in misleading discussions and improperly evaluated proposals in making the tradeoff decision.

We deny the protest.

BACKGROUND

The RFP, set-aside for small business concerns, contemplated the award of multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts for ancillary medical

services, nursing services, and physician services at military treatment facilities in Hawaii and Guam under the Army Direct Care Medical Services--Generation Two program. The RFP stated that a minimum of five contracts would be awarded for each specialty, each with a 4-year ordering period for fixed-price task orders. RFP at 99, 101. Offerors were permitted to submit proposals for one or more specialties. Id. at 80. This protest concerns the contract awards for ancillary medical services.¹

The RFP stated that contracts would be awarded to the offerors providing the best value to the government, considering technical quality, performance risk, and price. Technical quality and performance risk were of equal importance, and when combined were significantly more important than price. Id. at 102. Proposals had to be rated no less than acceptable under the technical quality factor and no less than satisfactory confidence under the performance risk factor to be eligible for award.² Id.

Offerors were required to complete a pricing matrix that included hourly labor rates for each labor category, which were to be considered ceiling rates. The total amount of the pricing matrix represented the total evaluated price for each proposal. The reasonableness of prices would be determined based on adequate price competition. RFP at 106.

The Army received a number of proposals to provide ancillary medical services. The source selection evaluation board (SSEB) evaluated proposals and established a competitive range of 18 offerors, including Global Dynamics. Contracting Officer's Statement at 1.

The contracting officer conducted two rounds of discussions. As relevant here, in the first round of discussions, the agency identified "areas of concern" in Global Dynamics's proposal and asked that written responses be provided. Agency Report (AR), Tab 4, Global Dynamics Discussion Letter, at 1. The firm was informed that the hourly rates for 29 labor categories as well as its total proposed price of \$37,513,003 "appear[ed] low when compared to all other offerors in the competitive range," and was asked to review the prices. Id. at 5. In the second round of discussions, Global Dynamics was informed that its hourly rates for the therapeutic radiology technician labor category remained low in comparison to that of other offerors in the competitive range, and was asked to examine its proposal and make any desired changes. AR, Tab 5, Global Dynamics Final Proposal Revision Letter,

¹ Ancillary medical service providers are personnel that are supplemental to professional medical service providers (physicians and nurses), such as pharmacy technicians, dietitians, and physical therapists. RFP at 44.

² Proposals with an unknown confidence rating would also be considered for award.

at 1. In response to the two discussion letters, Global Dynamics raised its price to \$46,880,204.03.

After the SSEB evaluated final proposals, 16 of the 17 proposals that remained in the competitive range received an acceptable technical rating; 14 of the 17 received a substantial performance confidence rating. Prices ranged from \$44,124,794.84 to \$52,353,109.60. The lowest-priced proposals received the following ratings:

	Technical Quality	Performance Confidence	Total Evaluated Price
International Healthcare Staffing Alliance, LLC	Acceptable	Substantial	\$44,124,794.84
Saratoga Medical Center, Inc.	Acceptable	Substantial	\$44,810,652.80
Loyal Source Government Services	Acceptable	Substantial	\$45,593,587.86
MedPro Technologies	Acceptable	Substantial	\$45,833,419.60
Vesa Health & Technology	Acceptable	Substantial	\$46,106,986.88
Offeror A	Acceptable	Substantial	\$46,670,540.36
Global Dynamics	Acceptable	Substantial	\$46,880,204.03

AR, Tab 6, Comparative Analysis and Award Recommendation, at 17.

The source selection authority (SSA) reviewed the technical evaluations, performance risk assessments, price analyses, and the SSEB’s preliminary comparative analysis and award recommendation. As relevant here, the SSA acknowledged the strength assigned to Global Dynamics’ proposal for its [Deleted] feature, which allows the program manager to [Deleted], but concluded that the feature did not set Global Dynamics apart from other offerors and did not justify the price premium over lower-priced offerors. AR, Tab 10, Source Selection Decision Document, at 3.

On May 12, the Army notified unsuccessful offerors that it intended to award contracts to five offerors: International Healthcare Staffing Alliance, Saratoga Medical Center, Loyal Source Government Services, MedPro Technologies, and Vesa Health & Technology. AR, Tab 7, Unsuccessful Offeror Letter. On May 19, Global Dynamics filed a challenge to the small business size status of Loyal Source. AR, Tab 9, Size Challenge Letter, at 1. The contracting officer referred the size challenge to the Small Business Administration (SBA). While the size challenge was pending, the Army made award to the other four awardees. On June 16, the

SBA found Loyal Source to be a small business concern. AR, Tab 12, SBA Decision, at 4.

On June 24, Global Dynamics filed the instant protest. The Army stayed award to Loyal Source pending the outcome of the protest. Contracting Officer's Statement at 3, 8.

DISCUSSION

Global Dynamics argues that the Army misled it into raising its price and improperly evaluated proposals in making the award decision. As discussed below, we deny these protest grounds.³

Discussions

Global Dynamics contends that the Army repeatedly asked it during discussions to raise its prices. Protest at 4. The protester further contends that the agency's identification of its prices as being low during discussions was a directive to raise its prices. Protester Comments at 3.

In conducting discussions with offerors, an agency may not consciously mislead or coerce an offeror into raising its price. Serco Inc., B-407797.3, B-407797.4, Nov. 8, 2013, 2013 CPD ¶ 264 at 5. However, we will not find discussions to be improper where the agency in good faith provides accurate information to an offeror, even where the offeror uses that information to its ultimate competitive detriment. XtremeConcepts Sys., B-406804, Aug. 31, 2012, 2012 CPD ¶ 253 at 4; EMR, Inc., B-406625, July 17, 2012, 2012 CPD ¶ 209 at 4-5.

The record shows that the agency did not ask the protester to raise its price. As noted above, the discussions letter merely advised Global Dynamics of the relative standing of the firm's proposed evaluated price and specific labor rates relative to the prices of the proposals received, and asked that the firm review its prices. AR,

³ Global Dynamics also raised other issues, which we have considered and find that none provide a basis for sustaining the protest. For example, Global Dynamics complains that the Army failed to award a minimum of five contracts as anticipated by the RFP. As noted above, this premise is factually incorrect, as the Army apparently intends to make a fifth award pending the outcome of this protest. Moreover, to the extent the protester argues that the Army should have made a sixth award to Global Dynamics, where multiple awards are contemplated by a solicitation, the agency is entitled to exercise sound business judgment consistent with the terms of the solicitation in determining how many awards should be made. Systems Research & Applications Corp., B-298107, B-298107.2, June 26, 2006, 2006 CPD ¶ 103 at 10.

Tab 4, Global Dynamics Discussion Letter, at 5. We see nothing in the agency's communications with the protester that could be construed as directing the protester to take any particular action, but rather it left to the firm's business judgment whether it should raise its prices or explain the prices earlier submitted. See ITW Military GSE, B-403866.3, Dec. 7, 2010, 2010 CPD ¶ 282 at 4 (agency informing offeror that pricing was lower than government estimate does not compel offeror to take a specific action or mislead offeror).

Best-Value Decision

Global Dynamics argues that the Army failed to perform a proper best-value analysis because it failed to consider that the prices were ceiling prices and not absolute prices, and that the firm's prices for task orders would be lower. Protest at 4-5. The protester also maintains that the agency failed to properly consider whether the firm's [Deleted] feature, for which it received a strength "would save the government some money below the ceiling price." Protester Comments at 5.

In reviewing an agency's evaluation of proposals and source selection decision, we will examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. A protester's disagreement with an agency's judgment, without more, is insufficient to establish that an agency acted unreasonably. Watts-Obayashi, Joint Venture; Black Constr. Corp., B-409391 et al., Apr. 4, 2014, 2014 CPD ¶ 122 at 9.

The record before us provides no basis to sustain the protest. The RFP informed offerors that award would be made based on appropriate consideration of technical quality, performance risk, and price. RFP at 102. The determination of relative overall price to the government was to be established by utilizing the total evaluated price, which included the ceiling rates for each labor category. Id. The SSA used the total evaluated price in conducting his tradeoff decision. The SSA acknowledged the protester's strength for its [Deleted] feature, but did not consider that feature sufficient to merit the price premium. AR, Tab 10, Source Selection Decision Document, at 3. To the extent that Global Dynamics contends that the SSA should have quantified in some way the value of its [Deleted] feature in making his tradeoff decision, there is no requirement that the agency's selection decision quantify the best-value tradeoff. See Federal Acquisition Regulation § 15.308; TeKONTROL, Inc., B-290270, June 10, 2002, 2002 CPD ¶ 97 at 5.

The protest is denied.

Susan A. Poling
General Counsel