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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Venturi Technology Partners

File: B-292060

Date: June 10, 2003

C. W. Laugerbaum for the protester.

Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where in a competitive procurement under the Federal Supply Schedule (FSS) the record shows that the evaluation was reasonable and consistent with the stated evaluation factors.
 2. Agency's conduct of discussions with two other FSS vendors without affording protester an opportunity to address technical deficiencies in its proposal is unobjectionable where agency reasonably concluded that protester's proposal should be excluded from further consideration because of reasonable concerns about its technical compliance and its higher price.
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DECISION

Venturi Technology Partners protests the issuance of a task order to Genuity, Inc. under Genuity's General Services Administration (GSA) FSS contract No. GS-35F-0177J, pursuant to a request for proposals (RFP) issued by the Department of Veterans Affairs (VA) to acquire Internet service provider (ISP) services. Venturi challenges the evaluation of its proposal and complains that the agency improperly failed to conduct discussions with the firm. The protester also alleges that the agency improperly selected Genuity for award after Genuity had filed for bankruptcy.

We deny the protest.¹

The VA's Office of Cyber Security has a requirement for an ISP to provide the agency with a reliable, secure source for intranet connectivity with expansion capability to all VA employees and their designated business partners, support contractors, veterans, and other authorized users. The objective of this acquisition was to obtain the best available commercial pricing based on the agency's consolidation of all services under a single ISP task order.

The RFP was issued electronically on October 18, 2002, to five vendors holding current FSS contracts under GSA's commercial information technology schedule. Vendors were notified that this was a Federal Acquisition Regulation (FAR) Part 8 competition that would "follow the concepts" of FAR Part 12, commercial item acquisition procedures. RFP Cover Letter at 1. The successful contractor is required to provide all personnel, supervision, and other resources to operate and maintain dial-up ISP services 24 hours a day, 365 days a year with system availability of at least 99.9 percent. This includes ISP service that is compatible with the Microsoft Windows and MacIntosh operating systems. RFP Statement of Work (SOW) at 1-2. The ISP estimated usage was set forth in the solicitation as 2,000 users at the start of service, 20,000 by the end of Year 1, 50,000 by the end of Year 2, and 100,000 by the end of Year 3. Id. at 1.

The RFP contemplated the award of a single fixed-price task order for a base year, with two 1-year options and provided for award on a "best value" basis, price and other factors considered. The solicitation listed technical, management, and past performance as equally weighted non-price factors. RFP at 1. The RFP specifically advised offerors that "if your offer does not present sufficient information to permit complete technical evaluation by the Government, it may be rejected." Id. With respect to price, the RFP requested price proposals that included, among other things, pricing for each offeror's proposed ISP based on the total hours used by all VA users on a monthly basis and discount pricing based on usage. RFP SOW at 5-6. The RFP cautioned that the government intended to make award without discussions, although it reserved the right to conduct discussions if necessary, and advised that offerors should propose the best commercial pricing based on their GSA schedule. RFP Cover Letter at 1.

Four offerors (Genuity, the protester and two other firms) submitted timely technical and price proposals on November 1. The technical proposals were evaluated by assigning color/adjectival ratings of purple/exceptional, blue/good, green/satisfactory, yellow/marginal, or red/unacceptable and risk ratings of low,

¹Because a protective order was not issued in connection with this case, the language in our decision, which is based in part upon source selection sensitive and confidential information, is necessarily general.

medium, or high under the non-price factors.² Agency Report (AR) exh. 8, Rating Scale. Based on that evaluation, the evaluation team prepared a narrative assessment and overall color/adjectival consensus rating for each offeror. The consensus rating assigned to each initial proposal, is set forth below:

Offeror A	Blue/good	Low risk
Genuity	Blue/good	Medium risk
Offeror B	Green/satisfactory	Medium risk
Venturi	Green/satisfactory	Medium risk

AR exh. 5, Contracting Officer's Memorandum for File, at 2.

In the evaluation of Venturi's proposal, the evaluators identified numerous weaknesses in its technical approach which will be discussed in detail below. Under past performance, the evaluators noted that on its most relevant contract the protester provided a three-page description but no reference or point of contact to verify its past performance and that the other two identified contracts were smaller in scope. AR exh. 7, Venturi's Consensus Evaluation Report, at 1-2. The agency separately evaluated the offerors' price proposals, using different cost models in order to determine which commercial price schedule would provide the most advantageous pricing based on the ISP usage estimates set forth in the SOW for the base and option years. It is undisputed that under any of the VA's cost models or a comparison of unit pricing for these services, Venturi's price was evaluated as significantly higher than that of the other three offerors. Id.

The contracting officer reviewed the technical and price evaluations and concluded that both lower rated proposals would not be considered for award because "both had some technical deficiencies which do not make them of best value to the Government." AR exh. 5, Contracting Officer's Memorandum for File, at 2. With regard to Venturi, the contracting officer found that "Venturi had some technical deficiencies which hinted at a network buil[t] on older technology and not kept current" and determined that "Venturi and [Offeror B] were considered not to have strong enough proposals to be further considered for award." Id. at 3. The contracting officer then made the decision to seek "clarification/discussions" with the two higher rated, lower-priced offerors (Offeror A and Genuity), and each was given the opportunity to provide further pricing discounts. Thereafter, on December 6, the agency determined that Genuity's lower-priced revised proposal represented the best value to the government and issued the task order to Genuity on December 9. AR exh. 5, Contracting Officer's Memorandum for File, at 3-7. After

²The color/adjectival ratings used here were not disclosed in the solicitation.

receiving notice of the award and a debriefing, Venturi filed a protest with the agency. Following denial of its agency-level protest, Venturi filed this protest with our Office. Performance of Genuity's order has been ongoing based on a finding by the head of the contracting activity that continued performance was in the best interests of the government. AR exh. 15, Authorization to Continue Performance.

Venturi raises a number of challenges to the conduct of this procurement. Specifically, the protester challenges the evaluation of its technical proposal, arguing that its proposal met all solicitation requirements. The protester also argues that the agency improperly failed to hold discussions with the firm despite identifying various pricing concerns which the protester asserts it could have addressed through discussions. Protester's Comments at 1-2.

As a preliminary matter, the RFP stated that the VA intended to issue a task order against the vendor's GSA FSS contract and, as the RFP stated, the procedures of FAR Subpart 8.4 applied here. Those provisions anticipate that agencies will review vendors' federal supply schedules and place an order directly with the schedule contractor that can provide the supplies or services that represent the best value and meet the government's needs. FAR § 8.404(b)(2); Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 6. Where the agency intends to use the vendors' responses as the basis of a detailed technical evaluation, it may elect, as the VA did here, to use an approach that is like a competition in a negotiated procurement. We will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. Amdahl Corp., B-281255, Dec. 28, 1998, 98-2 CPD ¶ 161 at 3. The fact that the protester disagrees with the agency does not render the evaluation unreasonable. Id.; ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7.

The contracting officer determined that Venturi's technical proposal had technical deficiencies because the firm's proposed ISP service did not satisfy all the solicitation requirements. The consensus evaluation report on Venturi's initial proposal shows that the agency evaluators had a number of detailed reasons to support this finding. For instance, Venturi's proposed ISP did not establish that its system was compatible with MAC OSX, as required by SOW ¶ 3(a)(5)(ii); rather, the protester simply stated without explanation or support that MAC OSX "[would] be available in late November." AR exh 9, Venturi's Technical Proposal, at 13. The agency evaluators noted that Venturi currently did not offer MAC OSX compatibility and had not provided any guarantee of availability. AR exh.1, Contracting Officer's Statement of Facts, at 6. The protester's response under SOW ¶ 3(a)(2), which requires the successful contractor to provide dial-up modems that are capable of providing V.90 connections, did not state how the firm would satisfy the requirement, but stated that "[w]herever available, V.90 and V.92 modems are supplied." The protester's response did not indicate that the firm's proposed ISP solution could support V.90 connections for all users, as required by the SOW. Id. In this regard, the evaluators noted, "the issue with V.90 not available [for all users], besides not meeting the requirement, may signify a network built on older

technology and has not been kept current.” AR exh. 7, Venturi’s Consensus Evaluation Report, at 2. The evaluators also found that the protester’s proposal did not clearly meet the solicitation requirement set forth in SOW ¶ 3(b)(1) that the ISP system availability should be at least 99.9 percent, because the protester conditioned the availability based on a minimum \$10,000 in actual usage per month. The evaluators also were concerned that Venturi’s technical approach otherwise was unclear as to the system availability guarantee. Id. at 1. Venturi has not rebutted the evaluated technical deficiencies in its proposal in either its protest or comments on the agency report. On this record, we have no basis to question the evaluation of Venturi’s proposal under the non-price factors. Nor has Venturi established as erroneous the agency’s determination that Venturi’s pricing was significantly higher than all other firms’ proposed pricing.³ Thus, we have no basis to conclude that the agency’s evaluation was unreasonable.

Venturi also challenges the agency’s decision not to conduct discussions with it concerning its proposal. The protester maintains that it was treated in a disparate manner because, while the agency had questions of all offerors, the agency did not afford the protester an opportunity to address these concerns, but held discussions only with the two higher rated offerors. Protester’s Comments at 1-2. It is not entirely clear from the record whether the contracting officer determined that Venturi’s proposal was unacceptable, although we believe that the deficiencies identified would support a determination to that effect. If Venturi’s proposal was technically unacceptable, our Office has recognized that where a quote or proposal is eliminated from the competition as unacceptable, the vendor is not entitled to discussions. Warden Assocs., Inc., B-291238, Dec. 9, 2002, 2002 CPD ¶ 215 at 3. Alternatively, since the contracting officer had reasonable concerns about the technical compliance of Venturi’s proposal and that Venturi’s proposal was significantly higher-priced than the other firms’ proposals, we find that the contracting officer reasonably concluded that Venturi’s proposal was inferior from a technical and price standpoint to the proposals of Offeror A and the awardee. Therefore, if the contracting officer believed that Venturi’s proposal was so inferior to the other two proposals that Venturi did not have a reasonable chance for award, we think the contracting officer’s decision to exclude Venturi from discussions was justified. In these circumstances, we view the contracting officer’s decision to

³We note that after Venturi was debriefed on the winning proposal, Venturi stated in its agency-level protest that it could have submitted a lower price and included a price revision that purports to show that the government could have saved approximately \$1.8 million had the agency conducted discussions with the firm. The fact that Venturi could have offered a lower price does not establish any impropriety in the agency’s evaluation. This price reduction was not part of Venturi’s original proposal and, as stated above, the RFP specifically advised vendors to propose their best pricing initially. As discussed previously, the record supports the evaluation conclusion that Venturi’s price proposal was the highest of the four proposals.

exclude Venturi from further consideration in this FSS procurement to be comparable to an exclusion of a proposal from the competitive range under FAR Part 15, which governs contracting by negotiation. Under the circumstances here, we conclude that the VA had a reasonable basis for eliminating the protester's proposal from further consideration without conducting discussions with the firm.

The protest is denied.⁴

Anthony H. Gamboa
General Counsel

⁴Venturi argues that issuance of the order to Genuity was improper because the agency knew, prior to award, that the firm had commenced bankruptcy proceedings. This argument is without merit. The mere fact that an offeror files a petition in bankruptcy under Chapter 11 of the Bankruptcy Act does not necessarily require a finding of nonresponsibility. FAR § 9.104-1; Sprint Communications Co. LP; Global Crossing Telecomms., Inc.--Protests and Recon., B-288413.11, B-288413.2, Oct. 8, 2002, 2002 CPD ¶ 171 at 4. Venturi also alleges other improprieties regarding the manner in which the VA conducted the procurement. We have reviewed these allegations and conclude that they do not provide any basis to disturb the award.