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Decision

Matter of: Security Consultants Group, Inc.

File: B-293344.2

Date: March 19, 2004

Stephen M. Ryan, Esq., and Holly A. Roth, Esq., Manatt, Phelps & Phillips, for the protester.

Joseph J. Petrillo, Esq., and Karen D. Powell, Esq., Petrillo & Powell, for Coastal International Security, Inc., an intervenor.

Aaron T. Marshall, Esq., Department of Homeland Security, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision to reopen competition, after making award to protester, in order to correct solicitation defect (failure to accurately disclose intended weights of evaluation factors), was unreasonable where record does not establish a reasonable possibility that any offeror was prejudiced by the defect; reopening of competition thus did not provide any benefit to the procurement system that would justify competitive harm to protester from resoliciting after exposure of protester's price.

DECISION

Security Consultants Group, Inc. (SCG) protests the action of the Department of Homeland Security (DHS) in canceling a task order awarded to SCG under request for proposals (RFP) No. GS-07P-03-FCD-0131, issued by the General Services Administration for security guard services in Texas and Oklahoma. SCG asserts that the agency erred in reopening the competition to correct a solicitation defect.

We sustain the protest.

The RFP sought proposals to furnish security guard services for DHS's Bureau of Immigration and Customs Enforcement at various installations in Texas and Oklahoma. The solicitation contemplated the issuance of a fixed-price task order under the successful vendor's Federal Supply Schedule contract for a base period, with 4 option years. Award was to be made on a "best value" basis, with proposals evaluated under four factors--supervision/key personnel, training plan, past

performance, and price. The three technical factors combined were significantly more important than price.

[Deleted] offerors, including SCG, CIS, and Southwestern Security Services, Inc. (SSSI), submitted proposals, which were evaluated by the source selection team. Based on SCG's technical proposal score and its price, the contracting officer concluded that SCG's proposal represented the best value to the government, and awarded it the task order. SSSI protested to our Office, challenging the evaluation of its proposal and the award decision; we ultimately dismissed the protest (along with similar protests against other awards) for failure to state a valid basis of protest (B-293295.2, B-293344, B-293345, B-293346, Dec. 2, 2003).

In reviewing the contract record, the agency realized that the RFP had not disclosed the relative weights of the three technical factors, leaving offerors to assume that all three were of equal weight. Agency Report at 3; see Maryland Off. Relocators, B-291092, Nov. 12, 2002, 2002 CPD ¶ 198 at 5. Specifically, the evaluation plan--and the actual evaluation--had assigned past performance a weight of 60 percent, and weights of 20 percent each to the supervision/key personnel and training factors. Accordingly, although the SSSI protest had been dismissed, the agency decided to take corrective action by amending the RFP to set forth the factors' relative weights and providing the offerors an opportunity to revise their technical and price proposals. After receiving notice of the agency's corrective action, SCG filed this protest. The agency subsequently modified the task order, effectively terminating SCG's contract for this work.

SCG asserts that the agency's corrective action was unwarranted because none of the offerors was prejudiced by the defect identified by the agency, and that it will be at an unfair competitive disadvantage in the reopened competition because its contract price has been disclosed. The agency responds that the failure to disclose the relative weights of the technical factors was a material solicitation deficiency that had to be remedied by reopening the competition, because it could have affected the way offerors prepared their proposals, and thus could have affected the award determination.

Contracting agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. RS Info. Sys., Inc., B-287185.2, B-287185.3, May 16, 2001, 2001 CPD ¶ 98 at 4. Where the corrective action taken by an agency is otherwise unobjectionable, a request for revised price proposals is not improper merely because the awardee's price has been exposed. Strand Hunt Constr., Inc., B-292415, Sept. 9, 2003, 2003 CPD ¶ 167 at 6. We have recognized a limited exception to that rule where the record establishes that there was no impropriety in the original evaluation and award, or that an actual impropriety did not result in any prejudice to offerors, reopening the competition after prices have been disclosed does not provide any benefit to the procurement

system that would justify compromising the offerors' competitive positions. Hawaii Int'l Movers, Inc., B-248131, Aug. 3, 1992, 92-2 CPD ¶ 67 at 6, recon. denied, Gunn Van Lines; Dept. of the Navy--Recon., B-248131.2, B-248131.4, Nov. 10, 1992, 92-2 CPD ¶ 336.

Here, while the agency correctly determined that there was a deficiency in the RFP, there is nothing in the record to establish, and the agency has not shown, a reasonable possibility that any offeror was prejudiced by the deficiency.¹

The most significant difference between the evaluation scheme identified in the RFP and the one actually used by the agency was under the past performance factor; rather than being given the same weight as the other two factors--as was called for by virtue of the RFP's silence as to weighting--the past performance factor was assigned three times as much weight. As a general proposition, it is true that an offeror may devote little effort with regard to a particular area in its proposal where it is led to believe that the area will not be given much weight in the evaluation; if the area is then given significantly more weight than indicated to the offeror, this could have prejudicially affected the offeror's preparation of its proposal and thus its chances of being selected for award. However, past performance, by its nature, is an area where offerors generally would have no reason not to submit the best possible information as part of their proposals, regardless of the precise weight assigned to the past performance evaluation factor. In this regard, the RFP here set forth detailed requirements for past performance submissions, and warned that the failure to submit complete and accurate information could render the proposal deficient. RFP at 101-02.

Moreover, here it is clear that the four top-scored offerors (including SCG) were not misled into devoting fewer resources to proposal preparation in the past performance area, since they all received [deleted] under the past performance factor. This being the case, we view the record as clearly establishing that these offerors were not prejudiced by the RFP's failure to set forth the actual evaluation weight for the past performance factor.

Similarly, there is no reason to believe that the four top-rated offerors were prejudiced with regard to the remaining factors--supervision/key personnel and training. These factors were effectively weighted at 33.3 percent each under the RFP, but were assigned only 20 percent weight in the actual evaluation. The four offerors with the top scores had [deleted] under the training factor and [deleted] under the supervision/key personnel factor. Since, unlike the past performance factor, these factors received somewhat less weight in the actual evaluation than

¹ A solicitation that does not ensure that all firms are on notice of how offers are actually to be evaluated, such that they can compete on an equal basis, is materially deficient. The Faxon Co., B-227835.3, B-227835.5, Nov. 2, 1987, 87-2 CPD ¶ 425 at 4.

offerors were led to believe from the RFP, logically the offerors would not have expended extra effort on, or otherwise revised, these aspects of their proposals had they known the actual weights. We also see no reasonable basis for concern that any of these offerors might have adjusted its proposed prices had it known of the actual weighting of individual non-price factors.

SSSI, the [deleted] offeror, did not have [deleted] under past performance. While SSSI therefore theoretically would have an incentive to spend more resources in that area if told that it would carry significantly greater evaluation weight than the RFP indicated, as discussed above, we do not believe that there is a reasonable basis for concern that SSSI failed to submit its most complete and best past performance information because it believed that past performance was receiving 33.3 percent, rather than 60 percent, of the weight for non-price factors. Moreover, even assuming SSSI could improve its proposal so as to receive a perfect score under the past performance factor, its lower scores under the supervision/key personnel and training factors still would leave its proposal some [deleted]. Since SSSI's scores were [deleted], and the solicitation defect involved the relative weight of those three factors (not the relative weighting overall of technical vis-à-vis price), we see no basis to find a reasonable possibility that the limited error regarding the relative weighting of the three factors could have prejudiced that firm's lowest-rated proposal's chances of winning the competition.

In short, the record does not establish that the defective solicitation resulted in the reasonable possibility of prejudice to any of the offerors. Thus, given that SCG's competitive position has been compromised by disclosure of its price, there is no benefit to the procurement system that would justify reopening the competition. Hawaii Int'l Movers, Inc., supra. Accordingly, we sustain the protest. By letter of today to the Secretary of Homeland Security, we are recommending that SCG's award be reinstated. We also recommend that the agency reimburse SCG its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2003). SCG's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving of our decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel