



Decision

Matter of: Eggs & Bacon, Inc.

File: B-402591.2

Date: August 13, 2010

Kevin Thomas for the protester.

Tenley A. Carp, Esq., and John J. O'Brien, Esq., Cohen Mohr LLP, for View One, Inc., the intervenor.

Robert T. Wu, Esq., Department of the Army, for the agency.

Paula A. Williams, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision to select lower-rated, lower-priced proposal for award, even though technical considerations were more important than price, was unobjectionable where the evaluation was reasonable and consistent with the solicitation's stated evaluation factors and the tradeoff is fully supported by the record.

DECISION

Eggs & Bacon, Inc. (EBI), of Beverly Hills, California, protests the award of a contract to View One, Inc., of Annapolis, Maryland, under request for proposals (RFP) No. W91QF7-10-R-0011, issued by the Department of the Army, for event production services. EBI challenges the agency's decision to award the contract to View One.¹

We deny the protest.

¹ The protester was not represented by counsel and, therefore, did not have access to nonpublic information pursuant to the terms of a protective order. Accordingly, our discussion in this decision is necessarily general in nature to avoid reference to nonpublic information. Our conclusions, however, are based on our review of the entire record, including nonpublic information.

BACKGROUND

The Military District of Washington produces a yearly stage show and accompanying video program entitled Spirit of America to bring the story of the Army to the public, to honor the past and present sacrifices of American soldiers, and to enhance Army recruiting efforts.

The RFP sought proposals for a contractor to furnish all non-military personnel, equipment, tools, materials, and supervision to perform pre-production, production, and event production services for the Spirit of America 2010 program. RFP at 6. The RFP contemplated award of a fixed-price contract to the offeror whose proposal was determined to represent the best value to the government. Proposals were to be evaluated on the basis of five equally weighted evaluation factors: (1) technical capability, (2) past performance, (3) relevant experience, (4) personnel skill/experience, and (5) price. The non-price factors, combined, were significantly more important than price. RFP at 26-27. The RFP advised that the agency anticipated making award based on initial proposals, without engaging in discussions. Id. at 28.

Six offerors submitted proposals, including EBI and View One, which were evaluated by a source selection evaluation board (SSEB). Under the technical capability, relevant experience, and personnel skill/experience factors, the SSEB evaluated proposals using adjectival ratings of excellent, good, acceptable, marginal, or unacceptable.² Under past performance, proposals were assigned adjectival ratings of excellent, good, adequate, marginal, poor, or neutral, with corresponding performance risk ratings of either very low, low, moderate, high, very high, or unknown. Id. at 26-27.

² The proposal ratings relevant to this protest were defined as follows:

Excellent	Excellent understanding of requirements and proposes an approach that significantly exceeds minimum requirements . . . Proposal contains several significant strengths and other strengths . . . [V]ery low degree of risk.
Good	High quality in most respects and meets and in some instances exceeds minimum requirements . . . Proposal contains some significant strengths and strengths. Proposal contains no deficiencies or significant weaknesses . . . [L]ow degree of risk.
Marginal	A proposal that satisfies most but not all of the Government's requirements and/or in some instances fails to provide sufficient detail . . . The proposal contains weaknesses . . . and/or some deficiencies . . . [P]roposal risk is moderate to high.

RFP at 27.

EBI's and View One's proposal each received a rating of excellent under each non-price evaluation factor. EBI's evaluated price was \$2,779,162.47 and View One's evaluated price was \$2,481,591.00. Agency Report (AR), exh. 21, Supplemental Source Selection Decision Document, at 1. The source selection authority (SSA) reviewed the evaluation findings and concluded that View One's proposal represented the best value and made award to that firm. After receiving a debriefing, EBI challenged the award in a protest filed with our Office; the agency took corrective action, and we dismissed the protest as academic (B-402591, Apr. 7, 2010).

The proposals submitted by EBI and View One were re-evaluated and the SSEB again assigned the same ratings to each proposal, *i.e.*, a rating of excellent under the technical capability, past performance, and relative experience factors, and a marginal rating under the personnel skill/experience factor. AR, exh. 21, Supplemental Source Selection Decision Document, at 7, 10. The SSA reviewed the SSEB's consensus evaluation findings and also independently reviewed the offerors' proposals. The SSA lowered the overall evaluation rating for the View One proposal under the technical capability factor to good (rather than excellent) to reflect his finding of identified weaknesses under that factor. *Id.* at 14-19.

The ratings assigned by the SSA, which were used to make the new source selection decision, are set forth below:

	EBI	View One
Technical Capability	Excellent	Good
Past Performance	Excellent	Excellent
Relevant Experience	Excellent	Excellent
Personnel Skill/Experience	Marginal	Marginal
Evaluated Price	\$2,779,162.47	\$2,481,591.00

Id. at 19.

The SSA determined that the price proposed by View One was fair and reasonable, and that the cost savings associated with View One's proposal outweighed the technical advantages associated with EBI's proposal. *Id.* at 20-23; Contracting Officer's Statement at 8-10. The protester was notified that View One's proposal was again selected for award and, after EBI received a debriefing, it filed this protest.

DISCUSSION

The protester generally challenges the evaluation of proposals, alleging that View One's proposal should have been evaluated inferior to its own proposal under the evaluation factors. EBI complains that the Army's determination that View One's

proposal reflected the best value to the government was unreasonable, because the non-price factors when combined were significantly more important than price.³

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. It is well settled that an agency may properly select a lower-rated, lower-priced proposal, even where price is a less important evaluation factor than technical merit, where it reasonably concludes that the price premium involved in selecting the higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. See, e.g., Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4.

The agency has provided the detailed record of its evaluation of proposals, the selection decision, and the proposals submitted by both offerors. Our review of the contemporaneous record here has revealed nothing to lead us to conclude that the agency's evaluation findings and conclusions for each proposal were unreasonable or otherwise improper. For example, under the personnel skill/experience factor, the record shows that both EBI's and View One's proposed project manager were judged to have most, but not all, the required experience managing a qualifying project within the past 5 years. Therefore, each offeror's proposal was assigned a rating of marginal under this factor as the agency evaluators concluded that their proposals satisfied most of the RFP's requirements. AR, exh. 21, Supplemental Source Selection Decision Document, at 9, 13-14, and 19. While EBI believes that its proposed project manager had the requisite experience, it has not persuasively shown that the evaluators' judgment in this regard was unreasonable. A protester's disagreement with the agency's determinations as to the relative merit of competing proposals and its judgment as to which proposal offers the best value to the agency, does not establish that the evaluation or source selection was unreasonable. Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6; Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

As to the agency's best value determination, the record shows that the SSA was clearly aware of the relative merits and comparative prices of the EBI and View One proposals when he performed his tradeoff. Specifically, the SSA comprehensively

³ EBI also contends, generally, that View One had an unfair competitive advantage and complains that the agency failed to negate this advantage in the evaluation. However, the record does not support the protester's allegations. EBI's other contention, that its debriefing was inadequate and otherwise flawed, is not subject to our review inasmuch as the adequacy and conduct of a debriefing is a procedural matter that does not involve the validity of an award. Healthcare Tech. Solutions Int'l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5.

identified and described all the strengths included in the EBI proposal, AR, exh. 21, Supplemental Source Selection Decision Document, at 14-15, 20-23, and correspondingly, identified all of the strengths and weaknesses found in View One's proposal. Id. at 15-16, 20-23. After performing this detailed analysis of the relative merits of the proposals, the SSA then made his tradeoff, comparing the relative merits of the EBI proposal with those of the View One proposal, and considering as well, the price difference between the two proposals. In this regard, the SSA found that EBI's proposal was superior to View One's under the technical capability factor, but he concluded that this superiority was not "an overwhelming one." AR, exh. 24, Redacted Supplemental Source Selection Decision Document, at 16. Under the past performance and relevant experience factors, the SSA also noted that EBI's proposal had a "very slight advantage" over View One's proposal, but ultimately determined that the advantages offered by EBI's higher-rated proposal were not worth the additional price. Id.

From the discussion in the Supplemental Source Selection Decision Document, it is clear that the SSA understood the evaluated differences between the two proposals and reasonably decided to award the contract to View One because of what the SSA viewed as the price premium associated with EBI's higher-rated proposal. We conclude that there is no basis to object to the agency's source selection decision here.

Next, EBI asserts that if the Army had exercised "due diligence" as proscribed by Federal Acquisition Regulation § 9.105-1, it would have concluded that View One was not a responsible contractor and thus was ineligible for award. Protest at 8; Protester's Comments at 2, 6, and 13.

Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office will generally not consider a protest challenging an affirmative determination of responsibility except under limited, specified exceptions. 4 C.F.R. § 21.5(c) (2010); T.F. Boyle Transp., Inc., B-310708, B-310708.2, Jan. 29, 2008, 2008 CPD ¶ 52 at 5. The exceptions are protests that allege that definitive responsibility criteria were not met, and those that identify evidence raising serious concerns that, in reaching a responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c).

Here, EBI generally alleges that the RFP included special standards of performance, in other words, definitive responsibility criteria, which View One allegedly did not meet. Protester's Comments at 6. In support, the protester recites various provisions in the evaluation factors, such as technical capability, which state, in part,

that an offeror should have “a specific set of experiences” with a “specified set of technical ‘specialized equipment.’”⁴ See, e.g., Protester’s Comments at 11.

Contrary to EBI’s contentions, the requirement for an offeror to demonstrate in its proposal the capability to perform the specific tasks in the SOW is not a definitive responsibility criterion, but one of relative technical merit. Thus, for example, the evaluation factors such as technical capability and past performance do not contain a specific and objective responsibility standard. Rather, they pertain to the agency’s comparative evaluation of competing proposals in those areas using an adjectival/numerical scale as opposed to on a pass/fail basis. Since EBI’s challenge to the agency’s responsibility determination does not meet our threshold showing for review, we will not consider this basis of protest.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁴ A definitive responsibility criterion is a specific and objective standard, qualitative or quantitative, that is established by a contracting agency in a solicitation to measure an offeror’s ability to perform a contract. Moreover, in order to be a definitive responsibility criterion, the solicitation provision must reasonably inform offerors that they must demonstrate compliance with the standard as a precondition to receiving the award. Public Facility Consortium I, LLC; JDL Castle Corp., B-295911, B-295911.2, May 4, 2005, 2005 CPD ¶ 170 at 3.