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Benejam



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: SeaSpace Corporation

File: B-252476.2

Date: June 14, 1993

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Niel Moeller, Esq., Department of Commerce, for the agency.
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DIGEST

1. Protester's contention that source evaluation board (SEB) improperly evaluated competing proposals is denied where the record shows that the SEB evaluated proposals in accordance with the evaluation criteria announced in the solicitation and the record reasonably supports the protester's lower overall technical rating.
2. Contracting agency reasonably excluded one member from source evaluation board in order to avoid a potential conflict of interest and to protect the integrity of the procurement process.
3. Agencies are not obligated to afford offerors all-encompassing discussions, only to lead offerors generally into the areas of their proposals requiring amplification.
4. Award to a higher priced offeror is unobjectionable under a request for proposals that stated that technical quality would be considered substantially more important than price; agency reasonably found that awardee's proposal was worth the higher price; and the selection decision was reasonably based and consistent with the solicitation's evaluation scheme.

DECISION

SeaSpace Corporation protests the award of a contract to Global Imaging, Inc., under request for proposals (RFP) No. 52ABNW-2-00079, issued by the National Oceanic and

Atmospheric Administration (NOAA) for high resolution picture transmission (HRPT) image processing subsystems (HIPS), SeaSpace principally contends that the agency improperly evaluated competing proposals; that NOAA improperly failed to conduct meaningful discussions; and that the evaluation board was improperly biased in favor of the awardee.

We deny the protest.

BACKGROUND

The RFP, issued August 13, 1992, sought proposals for two HRPT/HIPS systems for use by the National Weather Service's forecast offices in Honolulu, Hawaii, and Redwood City, California. These systems process data obtained from polar-orbiting meteorological satellites used in connection with NOAA's weather forecasting and warnings program. The RFP contemplated the award of a firm, fixed-price contract to provide a basic HIPS system at each location, with up to five 1-year options for certain training and maintenance services.¹

Offerors were required to submit separate technical and price proposals to be evaluated separately. Section M of the RFP listed the following technical evaluation factors in descending order of importance:²

1. Proposed hardware/workstations

(a) Capability of proposed hardware/workstations to meet the minimum requirements in the statement of work (SOW). Proposed hardware/workstations exceeding the minimum requirements will be given additional weight.

(b) Demonstrated flexibility of the proposed hardware/workstation to perform all required functions within the time allotted for ingest, processing and display in accordance with the SOW. Proposed hardware/workstations exceeding the minimum requirements for power, capacity and speed will be given additional weight.

¹Each HIPS consists of four major components: (1) tracking antenna; (2) ingest computer and synchronizer; (3) main processor; and (4) two work stations for forecaster access and display.

²The RFP stated that the subfactors listed under factor No. 1 were of equal weight; and that factors No. 2 and 3, and factors No. 4 and 5 were also of equal weight.

2. Proposed software

(a) Capability of proposed software to meet the minimum requirements in the SOW. Proposed software exceeding the minimum requirements will be given additional weight.

(b) Demonstrated flexibility of software to accommodate future enhancements as well as provide for additional real-time satellite data systems. Demonstrate user friendliness of software and system administration.

3. Proposed downlink system

(a) Capability of proposed system to meet minimum requirements in the SOW. Proposed system exceeding the requirements will be given additional weight.

(b) Additional points will be given to those systems that demonstrate flexibility in accommodating future add-ons such as storage capability, monitors, additional remote workstations, etc., exceeding minimum requirements.

(c) Proposed approach and demonstrated capability that the system will interface with a multitude of computer systems.

4. Offeror's ability to meet the government's desired delivery date specified in section F, clause F.3.

5. Proposed training personnel and the proposed training program, after initial installation and subsequent training sessions, including option years.

6. Past performance of proposed system in similar applications.

The RFP stated that technical quality was substantially more important than price. Offerors were advised, however, that award would not necessarily be made for "capabilities that appear to exceed the government's minimum requirements"; the RFP also cautioned that award "will not necessarily be made to the lowest price proposed." Award was to be made to the offeror whose proposal was most advantageous to the government, price and other evaluation factors considered.

Three firms, including the protester and the awardee, responded by the September 24 extended date set for receipt of proposals.³ A source evaluation board (SEB) evaluated the initial technical proposals by assigning numerical ratings for each factor and subfactor in the RFP, for a maximum possible score of 2,500 points. Price proposals were evaluated separately. Consistent with the RFP's announcement that technical quality would be considered substantially more important than price, the SEB assigned a score of 75 points to the technical proposal earning the highest point score and 25 points to the lowest priced proposal, thus achieving a 3:1 technical/price ratio. The SEB assigned proportionately weighted scores to the remaining technical and price proposals.

Based on the results of the initial evaluation, the SEB rejected one proposal as technically unacceptable, retaining only the proposals submitted by SeaSpace and Global for further consideration. The following chart shows the results of the initial evaluation for those two offerors:

	Technical Points	Weighted Score	Price	Price Score	Total Score
Global	2,179.6	75	\$1,636,976	14	89
SeaSpace (HP 750)	2,093.8	72	1,140,847	20	92
SeaSpace (HP 730)	1,986.8	68.25	918,296	25	93.25

By letters dated October 29, the contracting officer submitted to SeaSpace and Global several common questions the SEB generated for both offerors regarding their proposed systems, and specific questions raised by the SEB based on the results of the evaluation unique to each offeror's proposal. Since both offerors proposed similar equipment, the SEB concluded that one major difference between the offerors was their proposed software. Accordingly, on November 5, several members of the SEB, accompanied by the administrative contracting officer, visited Global's and SeaSpace's offices for a demonstration of each offeror's proposed software's operation and functions. A site visit report was discussed with all SEB members, and the SEB rescored

³The RFP permitted offerors to submit alternate proposals, and SeaSpace submitted two proposals offering a HIPS based on a "Hewlett Packard 750" and a "Hewlett Packard 730," two different types of computer hardware, hereinafter referred to as HP 750 and HP 730, respectively.

proposals based on each offeror's responses to the agency's questions and site visit with the following results:⁴

	Technical Points	Weighted Score	Price	Price Score	Total Score
Global	1,823.4	75	\$1,552,176	14.5	89.5
SeaSpace (HP 750)	1,658.9	67.5	1,129,437	20	87.5
SeaSpace (HP 730)	1,557.8	63.75	906,886	25	88.75

On November 25, the agency issued amendment No. 4 to the RFP, requiring separate computers for data acquisition and processing, and submitted additional written questions to both Global and SeaSpace. NOAA requested both offerors to submit a completed price schedule based on new line items listed in the amendment, and requested that SeaSpace further clarify certain technical aspects of its offers. The SEB rescored proposals based on the offerors' responses to the amendment and to the questions as follows:

	Technical Points	Weighted Score	Price	Price Score	Total Score
Global	1,825.9	75	\$1,532,876	14.5	89.5
SeaSpace (HP 750)	1,705.6	69.75	1,123,395	19.75	89.5
SeaSpace (HP 730)	1,598.8	65.25	896,746	25	90.25

On December 11, NOAA requested best and final offers (BAFO) from both offerors. In its BAFO, Global modified its technical proposal and reduced its price. The SEB considered the changes to Global's proposal to be minimal, however, not warranting any changes to the firm's technical score. In its BAFO, SeaSpace changed both of its initial technical proposals by upgrading the computer hardware it offered from the HP 750 to an HP 755 and from the HP 730 to an HP 735. With its BAFO, SeaSpace also submitted a third alternate proposal labeled "Offer #3," based on an HP 715 computer. In a letter accompanying its BAFO, SeaSpace explained that except for several equipment characteristics and lower total price (\$652,322), its new third alternate proposal was identical to its offer based on the HP 735 computer. The SEB found that SeaSpace's new "Offer #3" lacked significant technical information to be properly evaluated, but rescored

⁴One of the original members of the SEB was not available during this round of scoring. As a result, the maximum number of possible raw points during this round of scoring was reduced from 2,500 to 2,000.

SeaSpace's initial proposals to reflect the upgraded computer hardware as follows:

	Technical Points	Weighted Score	Price	Price Score	Total Score
Global	1,825.9	75	\$1,169,405	19	94
SeaSpace (HP 755)	1,729.9	70.5	1,123,395	19.75	90.25
SeaSpace (HP 735)	1,696.8	69	896,746	25	94

Following a review of BAFOs the SEB concluded that it needed additional information from both offerors. In a letter dated December 23, NOAA reopened discussions by requesting both offerors to provide a detailed description regarding software subscription and maintenance. That letter also asked SeaSpace to discuss certain weaknesses the SEB noted regarding the firm's proposed user interface. Specifically, NOAA expressed its concern that during the site visit to SeaSpace's facility, the protester's software expert had difficulty calling up and running software routines. NOAA also noted that SeaSpace's user interface required an excessive number of "click and point" movements of the "mouse," rendering the system cumbersome and inefficient to use. In this regard, NOAA's letter concluded that "[c]learly the user interface, in its present state, [was] not acceptable" and that "[i]t is essential that the cumbersome (multiple point and click) movements be eliminated." Based on the protester's responses, the SEB rescored SeaSpace's proposals by lowering the protester's total technical point score under evaluation factor No. 2, proposed software, resulting in the following final scores:

	Technical Points	Weighted Score	Price	Price Score	Total Score
Global	1,825.9	75	\$1,169,405	19	94
SeaSpace (HP 755)	1,615.9	66	1,123,395	19.75	85.75
SeaSpace (HP 735)	1,582.9	64.5	896,746	25	89.5

By letters dated January 19, 1993, the agency informed both offerors that all discussions were concluded and requested BAFOs. Although both firms submitted BAFOs, since neither offeror made any further changes to its technical or price proposal, their respective scores remained unchanged. Based on the results of the final evaluation and the SEB's recommendation, the contracting officer determined that Global's proposal was most advantageous to the government, and awarded the contract to that firm on February 18. SeaSpace filed this protest in our Office on February 25, which it

supplemented on March 12, following a debriefing by the agency.⁵

PROTESTER'S CONTENTIONS

SeaSpace's numerous allegations may be summarized as follows: (1) NOAA improperly failed to evaluate the competing proposals in accordance with the criteria announced in the RFP; (2) NOAA failed to conduct meaningful discussions with SeaSpace; and (3) the SEB was improperly weighted in favor of the awardee.

DISCUSSION

Evaluation of Proposals

SeaSpace alleges that the agency failed to evaluate proposals against the criteria stated in the solicitation. For example, the protester argues that the SEB improperly awarded points to Global under evaluation factor No. 1 for hardware "redundancy" and "single point of failure," while unreasonably downgrading SeaSpace in these areas, despite the lack of a specific requirement in the RFP for those capabilities. The protester also argues that the SEB improperly downgraded SeaSpace's proposal because its system was incorrectly perceived by the SEB as not being "compatible" with other NOAA systems, even though the RFP did not require compatibility.

The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Id. Here, we find that the record supports the SEB's evaluation of proposals and the award decision.

⁵In accordance with Federal Acquisition Regulation (FAR), § 33.104(c)(ii), the head of the contracting activity determined that urgent and compelling circumstances that significantly affect the interests of the United States would not permit awaiting our decision and authorized contract performance notwithstanding the protest. Subsequently, the United States District Court for the Southern District of California issued a temporary restraining order enjoining further performance of the contract, and requested that our Office review SeaSpace's protest as expeditiously as possible.

Redundancy and Single Point of Failure

The protester's arguments that the SEB improperly awarded points to Global or unreasonably downgraded SeaSpace's proposal in this area are without merit. The agency explains that "redundancy" refers to duplication of similar components to ensure continued system operation in case of component failure. By incorporating redundancy in a system, potential "single points of failure" may be reduced or totally eliminated. Contrary to the protester's assertions, the capability of a computer system to continue to operate despite a component failure is a characteristic reasonably subsumed by evaluation factors No. 1 and 3--the capability and flexibility of the proposed hardware and software--and thus was properly rated under those factors. See Institute for Human Resources, B-246893, Apr. 13, 1992, 92-1 CPD ¶ 360 (while agencies are required to identify the major evaluation factors, agencies may consider unidentified areas reasonably related to or encompassed by the stated criteria).

The comments from the individual SEB members show that during the initial evaluation, the SEB found SeaSpace's proposed sharing of data acquisition (ingest) and main processing functions by the same computer (i.e., a single point of failure), to be a weakness in SeaSpace's system, downgrading the protester's proposal under evaluation factor Nos. 1 and 3. As a result, for instance, the protester's initial proposal (HP 750) earned a total of 237.7 points under evaluation factor No. 1 and 212 points under factor No. 3. The SEB did not find similar weaknesses in the awardee's proposal in these areas, earning Global 297.6 points under factor No. 1 and 232 points under factor No. 3.

Following the second evaluation of proposals, however, the SEB recommended that the RFP be amended to require separate ingest and main processor computers, thus eliminating the potential for a single point of failure, which the SEB had considered a weakness in SeaSpace's proposal. On November 25, 1992, NOAA issued amendment No. 4 to the RFP, requiring that the main processor computer reside in the Weather Service Forecast Office and that a separate ingest computer reside at the tracking antenna site. The amendment specifically required that the main processor be able to serve as the ingest computer in case that computer fails.

The SEB comments on the third evaluation of proposals submitted in response to amendment No. 4 show that all SEB members viewed SeaSpace's offering "separate computers for ingest and main processing" as a significant improvement of its proposal. As a result, the protester's point scores

(HP 750) under evaluation factors No. 1 and 3 increased to 279 and 233.9 points, respectively. Global's scores under those factors remained unchanged from the preceding evaluation.

The record thus shows that, contrary to the protester's assertions, the SEB properly downgraded SeaSpace's initial proposal for its weaknesses concerning the "single point of failure" under factor Nos. 1 and 3, and that based on the protester's responses to amendment No. 4 to the RFP, the SEB unanimously increased SeaSpace's ratings under those two factors during the rescoring of its proposal. The protester's contentions, therefore, that the SEB unreasonably downgraded SeaSpace's proposal with respect to "redundancy" and the "single point of failure" issues, or that the SEB improperly awarded points to Global in this area, are meritless. By issuing amendment No. 4 to the RFP, the agency allowed SeaSpace to correct what the SEB viewed as a weakness in the protester's proposed system; SeaSpace improved its proposal; and the SEB recognized the improvement by increasing the protester's technical score in this area. SeaSpace's assertion that the firm "was never given the opportunity to address [these] apparent concern[s] of the SEB," is simply baseless.

Compatibility

The protester argues that the SEB improperly downgraded SeaSpace's proposal because its system was incorrectly perceived by the SEB as not being "compatible" with other NOAA systems, despite the lack of such a requirement in the RFP. The agency agrees that "compatibility" with other systems was not required, explaining that this issue in fact relates to the following requirement under part 4.2 of the RFP regarding the user interface characteristics of the required system:

"The main processors and workstations shall meet the following minimum standards and requirements:

'1. The display format shall conform to the UNIX X-Window X-11, Version 4, standard (X11R4). The window manager must be motif.'" [Emphasis added.]

In response to this requirement, SeaSpace submitted with its proposal a reference manual stating that its proposed "XVU user interface is based on an enhanced version of the LXT Toolkit . . . Applications based on this toolkit are not as prevalent as applications based on OSF Motif." In view of the specific RFP requirement, the SEB found that this statement needed explanation, and in a letter dated December 7, 1992, NOAA specifically asked SeaSpace to provide further clarification and documentation regarding its proposed

window manager. On December 9, SeaSpace responded to the SEB's concern as follows:

"While 'xvu' is not based on the Motif Toolkit, 'xvu' does run nicely under the Motif window managers 'mwm' and 'vewm.' In fact, 'xvu' was demonstrated in the SeaSpace office to [NOAA] representatives on November 5, 1992, running under 'vewm.' Therefore, in clarification, the window manager is Motif."

The SEB concluded that SeaSpace's response was vague and did not alleviate its concern that the window manager SeaSpace proposed was not "Motif." NOAA continued to correspond with the protester in an effort to clarify this issue, and in a letter to SeaSpace dated January 13, 1993, the contracting officer expressed the SEB's concern regarding the Motif requirement as follows:

"In your December 3, 1992, response as to whether the window manager is MOTIF, you stated that 'in clarification, the window manager is MOTIF.' Yet, in the January 6, 1993, response, you proposed short and long-term fixes to conform to the true MOTIF window manager style guide. This response means that the proposed software is similar to, but not true MOTIF. . . . Without skirting the issue, is your software running under true MOTIF or isn't it?"

In response, SeaSpace stated that its "currently offered software is not written using the Motif toolkit, and therefore is not a Motif application." SeaSpace also stated that "in view of the increased popularity of Motif, SeaSpace had decided to restructure XVU (SeaSpace's proposed tool kit) so as to adopt many of the functional standards found in the Motif style guide by the beginning of spring, 1993." Based on SeaSpace's response, the SEB unanimously reduced the protester's score under evaluation factor No. 2, proposed software.

The protester's argument that the SEB improperly downgraded its proposal in this area is without merit. Although the RFP required the window manager to be "Motif," and SeaSpace was repeatedly requested to verify that its proposal complied with that requirement, SeaSpace's responses revealed potential difficulties in using the proposed XVU software. Although SeaSpace proposed short- and long-term solutions to converting its window manager to Motif, the SEB concluded that those solutions were inadequate since they would take several months to develop and implement, and SeaSpace offered no firm commitment as to when the needed changes would occur. The SEB concluded that since SeaSpace's

currently proposed window manager is not based on the required window manager, the lack of Motif "compatibility compromises the ability to use the HIPS system with other systems both internally and externally." The SEB further concluded that by not utilizing the Motif toolkit library, the flexibility of the software is greatly reduced. Although in its narrative comments, the SEB explains that SeaSpace's proposed HIPS would have difficulties accessing other NOAA computers because of the lack of Motif window manager, this explanation was only provided as an example of the effect of the reduced flexibility offered by SeaSpace's system, and does not show, as the protester argues, that the SEB improperly downgraded its system for lack of "compatibility." While SeaSpace disagrees with the SEB's conclusions, such disagreement does not show that they are unreasonable.

Given the specific requirement in the RFP for the window manager to be Motif and in view of SeaSpace's indirect and apparently conflicting responses to NOAA's repeated inquiries in this regard, it was reasonable for the SEB to question whether SeaSpace's proposal complied with the Motif requirement. Accordingly, the SEB reasonably reduced the protester's scores under factor No. 2, proposed software.

The protester further contends that the SEB improperly disregarded major "decremental" changes Global made to its proposal following the first round of BAFOs, while improperly raising SeaSpace's score only slightly despite significant improvements in its offer. According to the protester, Global's proposal should have been downgraded for "changing the . . . capture computer from an HP workstation to a smaller machine, a standard 486 pc, when even the HP 400 was viewed as only marginally adequate by the SEB." According to SeaSpace, the SEB ignored these changes despite the fact that they had the effect of reducing the capabilities of the system Global offered. On the other hand, the protester objects that the SEB raised SeaSpace's score only slightly for offering newer, higher-powered equipment in its BAFO.

Despite SeaSpace's contentions to the contrary, the SEB did consider the effect of changes proposed in both the awardee's and the protester's BAFOs. The record shows that in its BAFO Global substantially reduced its price by making what the SEB viewed as minimal technical changes to its proposal by deleting software subscription phone-in consultation (which was not required by the RFP), and by changing the capture computer. The record shows that the SEB considered these changes and concluded that they did not affect the overall capabilities of the system Global offered, requiring no changes to that offeror's score. While

SeaSpace objects that the changes Global made to its proposal should have had a "decremental" effect on that offeror's technical score, the protester has not shown why the agency's conclusion that the effect of the change was minor was unreasonable, or why Global's score should have been reduced as a result.

On the other hand, the record shows that by upgrading the computers it offered to an HP 755 and an HP 735, SeaSpace's technical scores increased 24.3 and 88.1 points, respectively, under evaluation factor No. 1. Contrary to SeaSpace's assertions, therefore, the record shows that the SEB considered SeaSpace's upgrade to its computers and properly increased the protester's score under the most important evaluation factor. The mere fact that SeaSpace disagrees with the amount of the point increase it received as a result of offering upgraded computers in its BAFO does not show that the agency's evaluation in this regard was unreasonable.

SeaSpace also contends that the agency improperly failed to consider its third alternate proposal, "Offer #3," despite its lower total price. The SEB did not consider that proposal primarily because the protester failed to provide sufficient technical information to permit the SEB to evaluate that offer, and NOAA concluded that it had insufficient time, in an already protracted procurement, in which to reopen discussions to allow SeaSpace to submit the required missing information.

In our view, NOAA was under no obligation to consider SeaSpace's alternate "Offer #3." SeaSpace's third alternate offer was submitted for the first time along with its BAFO on its original proposals. SeaSpace does not explain why it waited until the agency requested BAFOs to submit its third alternate proposal, and there is no evidence in the record showing that SeaSpace could not have submitted its alternate "Offer #3," with sufficient technical information to permit the SEB to fully evaluate the merits of that proposal, with the firm's original proposals prior to the initial closing date for receipt of proposals. SeaSpace's "Offer #3" was clearly a late offer for a different HIPS, which the agency could not have considered for award. See Wallace Coast Mach. Co., B-235608, Sept. 15, 1989, 89-2 CPD ¶ 234.

During these proceedings, SeaSpace extols the merits of its proposals with respect to the Motif requirement (user interface) and various other weaknesses the SEB identified with its system. The protester explains in detail, for example, how SeaSpace has received several other contracts for similar HIPS equipment and services, and how it proposed to similarly satisfy NOAA's requirements here. No matter how

competent a contractor may be, however, a technical evaluation must be based on information in or submitted with the proposal. Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371. As already shown, the protester had ample opportunity to address the agency's concern regarding the Motif issue, as well as other weaknesses in its proposal during the several rounds of discussions that occurred here, and failed to do so. SeaSpace may not now correct the deficiencies in its proposal.

Regarding SeaSpace's remaining objections to the evaluation of proposals, we have reviewed the record, including the SEB's comprehensive narrative explanations supporting the evaluation of both offerors' proposals, and the protester's extensive submissions during this proceeding. We find that the lower overall technical rating assigned SeaSpace's proposal is reasonably supported by the record. An agency may award to an offeror with a higher technical score and higher price where it reasonably determines that the price premium is justified considering the technical superiority of the awardee's proposal, and the result is consistent with the evaluation criteria. See Hercules Engines, Inc., B-246731, Mar. 19, 1992, 92-1 CPD ¶ 297. Based on our review of the record, we find that the contracting officer reasonably determined that Global's proposal was so technically superior, that despite SeaSpace's lower prices, Global's proposal was most advantageous to the government. Such a decision, especially within the context of a best value procurement where the RFP specifically stated that technical quality was substantially more important than price, clearly is unobjectionable. See Pathology Assocs., Inc., B-237208.2, Feb. 20, 1990, 90-1 CPD ¶ 292.⁶

Technical Leveling and Meaningful Discussions

SeaSpace also alleges that the agency's discussion questions with Global regarding the firm's proposed training constituted improper "technical leveling," i.e., helping an offeror to bring its proposal up to the level of other

⁶SeaSpace argues that NOAA's 3:1 technical/price ratio unduly emphasizes the importance of technical merit while minimizing price. We disagree. NOAA's scoring scheme accurately reflects the relative weights accorded technical factors and price announced in the RFP. The use of normalized point ratings, such as here, is neither improper nor uncommon where the RFP provides that technical considerations would be considered more important than price. See, e.g., Stay Inc. Protective Servs., B-246336.3, Apr. 24, 1992, 92-1 CPD ¶ 393; Unidyne Corp., B-232124, Oct. 20, 1988, 88-2 CPD ¶ 378.

proposals through successive rounds of discussions. See FAR § 15.610(d). In this regard, the protester alleges that the agency instructed Global during discussions to reduce the number of training days and associated travel, thus improperly instructing Global exactly how its proposal should be modified to increase its technical score. SeaSpace also contends that NOAA failed to hold meaningful discussions with the protester.

We find no support for the protester's assertion that the agency improperly instructed Global how to improve upon its proposal. In a discussion letter dated October 29, 1992, NOAA requested additional information from both offerors regarding weaknesses in their technical and price proposals. As relevant here, item No. 8 of the awardee's letter requested Global to clarify its training plan, including proposed training, training outline, and course curriculum (requirements set forth in the RFP); item No. 14 stated that "\$1,400 per day of training is high. Please consider lowering the rate." NOAA's letter to SeaSpace requested comparable information. For example, NOAA asked the protester to provide a fixed price for training, and to clarify whether its proposed daily rate of \$1,000 for training included salaries, lodging, and per diem.

We fail to see how requesting virtually identical information from both offerors concerning their training plans constitutes technical leveling. Rather, the agency's discussion questions in this area simply reflected weaknesses in each offeror's proposal, and appropriately sought clarifications from each concerning proposed training, an area which the RFP specifically stated would be rated under evaluation factor No. 5. Contrary to the protester's suggestion, there is no evidence in the record that by its discussion questions, the agency helped Global bring its proposal rating up to the level of SeaSpace's regarding training.⁷ With respect to the price-related questions, we find unobjectionable NOAA's apprising Global that it considered its proposed daily rate for training to exceed what the agency believed to be reasonable. See, e.g., Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333.

⁷We note that as a result of the offerors' responses to the agency's questions in this regard, the SEB increased Global's score under evaluation factor No. 5, proposed training, to 234 points, still lower than SeaSpace's score of 247 points for each of its proposals under that factor.

The protester also alleges that the agency failed to conduct meaningful discussions with SeaSpace because it failed to specifically identify certain weaknesses in its proposal. Contracting officers must balance a number of competing interests in selecting matters for discussion based on the facts of each acquisition. FAR § 15.610; Matrix International Logistics, Inc., B-249285.2, Dec. 30, 1992, 92-2 CPD ¶ 452. They must point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Dept. of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ _____. On the other hand, agencies are admonished by the FAR to protect the integrity of the procurement process by balancing the need for meaningful discussions against actions that result in technical leveling (FAR § 15.610(d)), technical transfusion (FAR § 15.610(e)(1)), or auctions (FAR § 15.610(e)(2)).

Thus, agencies are not required to afford offerors all-encompassing discussions. They need only lead offerors, as the agency did here, generally into the areas of their proposals that require amplification. TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573. Where a proposal is considered to be acceptable and in the competitive range, an agency is not required to discuss every aspect of the proposal that receives less than the maximum score. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530. Likewise, there is no requirement on the part of the agency to identify relative weaknesses in a proposal that is technically acceptable, but presents a relatively less desirable approach than others received. Fairchild Space and Def. Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190.

Here, while NOAA did not discuss every area where SeaSpace's proposal was found weak by comparison to Global's, it was not required to do so. The record shows that SeaSpace's proposal was considered acceptable overall; it contained no major deficiencies that would preclude the firm from performing the work satisfactorily. The areas in which SeaSpace's proposal lost significant points were areas where the SEB found, as a relative matter, that SeaSpace's proposed solutions simply were not as good as Global's, and those areas were discussed with SeaSpace in detail. For example, the SEB's major concerns were over the protester's software design, which, according to the SEB, would have required extensive modifications and upgrades before it would reach an acceptable level of flexibility and speed. While it is apparent that this caused the single greatest reduction in SeaSpace's point score, the agency repeatedly held discussions with SeaSpace on this point, and the SEB concluded that the protester's responses did not overcome its concerns. The SEB's comments during each evaluation of proposals and the resulting successive rounds of discussion

questions submitted to SeaSpace show that the agency reasonably led SeaSpace into areas of its proposal that required amplification, and over which the SEB had serious concerns. The agency was not required to raise every aspect of SeaSpace's proposal which the SEB found weaker than Global's. The fact that the protester's responses to NOAA's discussion questions did not overcome the SEB's concerns regarding user-friendliness or system flexibility does not establish that the agency's discussions were inadequate.

Composition of SEB

SeaSpace asserts that NOAA improperly removed, from the SEB one member who was not familiar with either offeror's system, leaving two SEB members familiar with Global's system. The protester essentially argues that since those two individuals were familiar with Global's system, they were predisposed to find SeaSpace's new and unknown system "cumbersome," and so reported to the remaining SEB members who were not present during the software demonstration, thus prejudicing their opinions about SeaSpace's system.

The protester's allegation that the composition of the SEB was biased in favor of Global is without merit. NOAA states that of the original six SEB members only one was familiar with Global's system. That member was only one of four individuals who comprised the SEB throughout the evaluations.⁶ In any case, the composition of an SEB is within the discretion of the contracting agency, and we will not object to the constitution of an evaluation panel absent a showing of fraud, bad faith, conflict of interest, or actual bias. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588. The mere fact that one of four SEB members may have been familiar with Global's system does not show that the SEB was biased in favor of the awardee or that the evaluation of proposals was conducted in bad faith.

The record shows that the agency excluded one member from the SEB to avoid a potential conflict of interest or a biased evaluation. Specifically, following the initial evaluation of proposals, the SEB member disclosed that he was a good friend of Dr. Robert Bernstein, president of SeaSpace. According to the contracting officer, the member stated during an SEB meeting where proposals were discussed that when visiting the area where the member lives and works, Dr. Bernstein stays at the member's home. In order to avoid a potential conflict of interest, the contracting officer decided to delete that member's scores from the

⁶Of the original six SEB members, the agency excluded a total of two individuals, leaving the SEB composed of four individuals.

initial SEB evaluation and exclude his further participation in the evaluation of proposals. Although the member attended the site visit and remained available to the SEB in a purely technical advisory capacity, the record shows that he was not involved in any subsequent scoring of proposals.

The protester responds that "there is no personal relationship between Dr. Bernstein and [the member], who know each other only professionally from many years ago, when Dr. Bernstein worked for several weeks on a government project at the Redwood City facility . . . where [the member] also works." The protester's response, however, overlooks the essence of the contracting officer's concerns in excusing the member from the SEB. Regardless of the nature of the relationship between Dr. Bernstein and the SEB member, whether a personal friendship or a professional relationship going back "many years," the contracting officer decided to exclude the member from the SEB to ensure impartiality in the evaluation and to preserve the integrity of the procurement process. SeaSpace's response notwithstanding, in view of the potential for a conflict of interest, we find the contracting officer's action to be reasonable. See Visucom Prods., Inc., B-240847, Dec. 17, 1990, 90-2 CPD ¶ 494.

Reopening negotiations

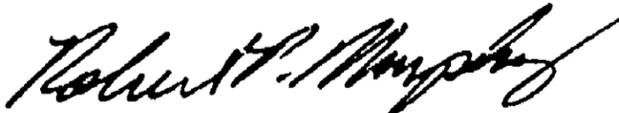
SeaSpace also objects to the sequence of events that preceded award. In particular, the protester argues that the agency improperly reopened negotiations after requesting BAFOs solely to raise the user interface issue with SeaSpace, a matter that, according to the protester, had been fully addressed during earlier discussions.

By letter electronically transmitted to SeaSpace on December 23, 1992, NOAA informed the protester that the agency required additional information regarding SeaSpace's user interface. That letter specifically set forth the agency's remaining concerns regarding that issue; requested a detailed plan describing how the protester intended to change its proposal to offer an "operationally acceptable" user interface; and specifically informed SeaSpace that in order to obtain the required information, NOAA was reopening negotiations.

Our Bid Protest Regulations require that protests based on other than an apparent solicitation impropriety be filed within 10 working days after the basis for protest is known. 4 C.F.R. § 21.2(a)(2) (1993). To be timely, therefore, SeaSpace was required to file any objections it may have had to NOAA's decision to reopen negotiations with the agency or our Office within 10 days after receipt of NOAA's December 23 letter. Since SeaSpace did not file its protest

in our Office until February 25, 1993, its objections to the agency's decision to reopen negotiations are untimely. In any case, given that the SEB reasonably viewed SeaSpace's responses to NOAA's direct inquiries regarding its proposed user interface to be too general, the agency was reasonably justified in reopening discussions in order to clarify that issue, and reasonably downgraded SeaSpace's technical proposal based upon its weak response. Since the relative standing of technical proposals was not affected as a result of the subsequent final rescoring, SeaSpace was not prejudiced by the agency's decision to reopen negotiations.

The protest is denied.



for James F. Hinchman
General Counsel