Comptroller General
of the United States

Washington, D.C. 20548

232202

Decision

Matter of: KPMG Peat Marwick

File: B-258990

Date: February 27, 1995

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Robert G. Fryling, Esq., and John W. Fowler, Jr., Esq., Blank, Rome, Comisky & McCauley, for Digital Systems Group, Inc., an interested party.
Eva Kleederman, Esq., Federal Emergency Management Agency, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging exclusion from competitive range is denied where the protester fails to raise any specific challenge to the evaluation of proposals, and where the agency accurately determined that the protester's lower-rated, significantly higher-priced proposal had no reasonable chance for award.

2. Protest that agency acted improperly by failing to hold face-to-face discussions is denied where the record shows that the agency held extensive written discussions with the offeror prior to excluding it from the competitive range and because there is no requirement that agencies conduct oral discussions rather than written discussions.

DECISION

KPMG Peat Marwick protests the exclusion of its proposal from the competitive range under letter of interest (LOI) No. EMW-94-LOI-1, issued by the Federal Emergency Management Agency (FEMA) to purchase financial management systems software.

We deny the protest.

On July 8, 1994, FEMA issued the LOI to all firms holding contracts under the General Services Administration's multiple award schedule contracts program for financial management systems software. See Federal Information

Resources Management Regulation (FIRMR) § 201-39.804-4. The LOI contemplated issuance of a delivery order under the contract of the firm whose proposal was selected for award. See id.

By the August 15 closing date, FEMA received proposals from three contractors. After a preliminary evaluation, members of the source evaluation board (SEB) prepared written discussion questions for each of the firms submitting proposals. These questions were issued on September 6, with written responses due by September 13. During this period, the SEB members also attended an operational demonstration at each offeror's facility. After receipt of written responses, and after the operational demonstration, the SEB reconvened on September 15 to reevaluate and score the proposals. Upon completion of this reevaluation, the SEB prepared a report setting forth the proposed price and scores of each offeror, as shown below:

Offeror	Score	Price
Digital Systems Group	79	$3,099,785
Company A	54	$3,217,312
KPMG Peat Marwick	53	$4,881,986

On September 26, the contracting officer concluded that neither Company A nor Peat Marwick had a reasonable chance of award because of their proposals' lower technical scores and higher prices. Thus, both proposals were excluded from the competitive range.[1] After further discussions, the agency issued a delivery order to Digital on September 30. This protest followed.

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[1]Both the agency and the protester treat this acquisition as if it were a conventional negotiated procurement subject to the Federal Acquisition Regulation (FAR) provisions related to such matters as a competitive range determination. Generally, the procedure applicable to these procurements, set forth at FIRMR § 210-39.804-4, simply calls for the agency to solicit and analyze the schedule contractors' offerings and to issue a delivery order to the contractor providing the most advantageous alternative. However, in view of the agency's apparent intent to blend features of the multiple award schedule program with features of a standard negotiated procurement, our decision addresses this protest using the concepts applicable to a standard competitive range determination. See Digital Systems Group, Inc., B-257721; B-257721.2, Nov. 2, 1994, 94-2 CPD ¶ 171 (denying protest against agency decision to supplement procedures in FIRMR § 201-39.804 with additional evaluation requirements).

The protester argues that FEMA improperly excluded its proposal from the competitive range; failed to hold oral discussions; and awarded numerical point scores that were inconsistent with the adjectival ratings assigned to the proposals.

In reviewing an agency decision to exclude an offeror from the competitive range, we look first to the agency's evaluation of proposals to determine whether the evaluation had a reasonable basis. MGM Land Co.; Tony Western, B-241169; B-241169.2, Jan. 17, 1991, 91-1 CPD ¶ 50. To make this assessment, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Thus, we look first to Peat Marwick's claim that FEMA's scoring of proposals was irrational.

Under the evaluation scheme set forth in the LOI, there were seven evaluation factors worth a total of 100 points. Of these factors, the functional capabilities factor, worth 35 points, was the most important. Digital's proposal received 29 points under this evaluation factor, while Peat Marwick's received 16 points; both companies received an adjectival rating of superior. Peat Marwick claims that the scoring was irrational because its proposal's score of 16 (out of 35 available points) is inconsistent with its adjectival rating of superior. Peat Marwick raises the same argument with respect to a second evaluation factor, systems capabilities. Under this factor, worth 20 total points, Peat Marwick's received 12 points and an adjectival rating of acceptable, while Digital's proposal received 16 points and a rating of superior.[2]

While it argues that its proposal should have received higher point scores under these two factors, Peat Marwick's simple comparison of the number of evaluated strengths and weaknesses of its proposal compared to the proposal of the

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[2]The numerical and adjectival ratings awarded for these two categories were consistent with the Acquisition Plan, which established the numerical point spread and corresponding adjectival rating to be used by the evaluators. The plan set forth the following ranges for the functional capabilities factor, worth a total of 35 points: 1-15 points, acceptable; 16-35 points, superior. The ranges for the systems capabilities factor, worth a total of 20 points, were as follows: 1-7 points, unacceptable; 8-11 points, unacceptable but susceptible to being made acceptable; 12-15 points, acceptable; 16-20 points, superior.

awardee does not constitute the kind of specific challenge needed to overturn an agency evaluation. See MGM Land Co.; Tony Western, supra (general arguments that do not rebut specific findings of an evaluation panel do not provide the necessary evidence to conclude that the evaluation was unreasonable). Moreover, even if Peat Marwick were awarded all the points that Peat Marwick argues its proposal should have received under these two factors (27 points instead of 16 points under the functional capabilities factor, and 16 points instead of 12 points under the systems capabilities factor), its score would have increased to 68 points--still significantly lower than the 79 points given to the awardee's proposal--while its price would remain nearly 60 percent higher than the awardee's price. Peat Marwick's relative position in the competition thus would not have materially changed. Under these circumstances, we fail to see how Peat Marwick was prejudiced as a result of the alleged evaluation impropriety.

With respect to Peat Marwick's contention that the agency held inadequate discussions, our review of the record reveals that the agency, in fact, conducted extensive discussions with Peat Marwick. The record shows that FEMA directed some 36 written questions to Peat Marwick involving numerous facets of the company's proposed approach. Peat Marwick, in turn, provided 54 pages of written responses and tabular information to address the issues raised by the agency. In the absence of any specific challenge by Peat Marwick that the discussion questions failed to address areas where the company was later downgraded, or that the agency misled the company in some way, we find nothing unreasonable about the conduct of discussions in this case. See generally Cecil Pruitt, Jr., Trustee, B-251705.2, June 10, 1993, 93-1 CPD ¶ 449 (protest argument that agency should have discussed matters that were not even considered a weakness by the agency, does not raise an adequate challenge to an agency's conduct of discussions). There is also no requirement that an agency conduct face-to-face discussions in addition to, or in lieu of, written discussions. FAR § 15.610(b).

Since we conclude that the evaluation of Peat Marwick's proposal was reasonable, we next review the decision to exclude Peat Marwick from the competitive range. In a negotiated procurement, an agency may determine a competitive range "on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award." FAR § 15.609(a). Our review of such determinations is to ensure that the evaluation as a whole has a reasonable basis and follows applicable statutes and regulations. See Advanced Sys. Technology, Inc.; Eng'g and

Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153.

In this case, other than its complaint that there were no oral discussions and that the scores were irrational, Peat Marwick offers no support for its argument that the competitive range determination was improper. As a starting point, there is no per se requirement that prevents an agency from making a second competitive range determination after discussions, and excluding an offeror from further consideration when it becomes clear that the offeror has no reasonable chance for award. InterAmerica Legal Systems, Inc., B-224443, Sept. 15, 1986, 86-2 CPD ¶ 304; Cotton & Co., B-210849, Oct. 12, 1983, 83-2 CPD ¶ 451.

Peat Marwick correctly notes that our Office will closely scrutinize a competitive range of one offeror, see Herley Indus., Inc., B-237960, Apr. 5, 1990, 90-1 CPD ¶ 364, aff'd, B-237960.2, Aug. 29, 1990, 90-2 CPD ¶ 173. However, unlike here, both of the decisions cited by the protester involved specific evaluation challenges that called into question the agency's competitive range determination. For example, in Coopers & Lybrand, 66 Comp. Gen. 216 (1987), 87-1 CPD ¶ 100, we sustained a protest against a FEMA competitive range determination where half of the difference in the scores of the two offerors derived from the agency's evaluation of their ability to obtain cooperation of high level leadership to address complex problems--which was one of the evaluation criteria in that procurement. Our decision explained that the scoring difference in this area was not great, that the problem involved omissions from the proposal rather than aspects of the proposed approach, and that it was unreasonable not to permit the protester an opportunity to remedy the issue after discussions. Likewise, in Eureka Software Solutions, Inc., B-250629, Feb. 8, 1993, 93-1 CPD ¶ 112, we sustained a protest against a competitive range determination where the protester showed that discussions could have resolved staffing uncertainties in the protester's proposal.

Our decision in Eureka also provided examples of situations where an agency should include a proposal in the competitive range and hold discussions. These situations include: if there is a close question of acceptability; if there is an opportunity for significant cost savings; if the inadequacies of the solicitation contributed to the technical deficiency of the proposals; or if the informational deficiency reasonably could be corrected by relatively limited discussions. See also Besserman Corp., 69 Comp. Gen. 252 (1990), 90-1 CPD ¶ 191. Here, the protester's proposal, while acceptable, was rated significantly lower than the proposal remaining in the competitive range; was priced significantly above that

proposal; and the protester has made no specific challenge to the evaluation--which on its face appears reasonable. On these facts, we have no basis to question the agency's decision to exclude the proposal from further consideration.

The protest is denied.

for Paul Lal
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General Counsel