



United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: Shaw Environmental & Infrastructure, Inc.

File: B-408502

Date: September 30, 2013

Kenneth B. Weckstein, Esq., and Aidan J. Delgado, Esq., Brown Rudnick LLP, for the protester.

Brian A. Bannon, Esq., Brian S. Gocial, Esq., and Lucas T. Hanback, Esq., Blank Rome LLP, for Tetra Tech EC, Inc., the intervenor.

Camille N. Rybar, Esq., Department of the Navy, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge of agency's evaluation of protester's proposal is denied where record fails to demonstrate that agency's evaluation was unreasonable or inconsistent with the terms of the solicitation.
 2. Protest that source selection decision is insufficiently documented is denied where the record establishes that source selection authority reasonably considered the relative merit of the proposals in her selection decision and concluded that specific advantages associated with the awardee's proposal were worth paying a higher price.
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DECISION

Shaw Environmental & Infrastructure, Inc., of San Diego, California, protests the award of a contract to Tetra Tech EC, Inc., of San Diego, California, under request for proposals (RFP) No. N62473-11-R-2201, issued by the Department of the Navy, Naval Facilities Engineering Command for environmental remediation services. The protester contends that the agency's evaluation of its proposal and source selection decision were flawed.

We deny the protest.

BACKGROUND

The RFP contemplated the award of a cost-plus-award-fee, indefinite-delivery/indefinite-quantity contract to provide remediation services at environmentally contaminated sites, predominately at Navy and Marine Corps installations in the western and southwestern U.S. The solicitation, which was issued on July 27, 2011, encompassed a base period of one year, with four 1-year options.

The solicitation provided for award to the offeror whose proposal represented the best value to the government based on consideration of cost/price and the following seven equally-weighted non-cost factors: (1) specialized experience; (2) safety; (3) contract management; (4) technical approach to Proposed Task Order (PTO) 0001; (5) past performance; (6) commitment to socio-economic programs; and (7) financial/management systems. The RFP advised that the non-cost factors, when combined, were significantly more important than cost/price. The solicitation also advised offerors that the agency intended to make award without conducting discussions.

Of relevance to this protest, under factor 4, technical approach to PTO 0001, the solicitation provided that the agency would evaluate offerors' proposed approaches to accomplishing PTO 0001, which is for cleanup of Installation Restoration Site 2 (Rose Canyon) at Marine Corps Air Station (MCAS) Miramar in southern California. Work elements to be performed include the preparation of planning documents. The solicitation instructed that the contractor was to provide five copies of all documents, including one for the regulatory agency. The RFP advised in the foregoing regard that MCAS Miramar is not on the Superfund National Priority List, meaning that the Regional Water Quality Control Board (RWQCB) is the responsible regulatory agency for the project. Id. at 86.

Also of relevance to this protest, under factor 7, financial/management systems, the solicitation provided that offerors' financial and management systems would be evaluated to determine their adequacy for performance of cost reimbursement contracts. The RFP advised that at a minimum, the government would evaluate the following financial and management systems/documents: cost accounting standards, estimating system, accounting system, purchasing system, billing system, government property management system, time-keeping/labor system, compensation system, and earned value management system. Offerors were to furnish copies of recent audits and explanations/proposed corrective action for any identified system deficiencies. The RFP also advised that the agency reserved the right to contact representatives of other agencies, including the Defense Contract Audit Agency (DCAA), the Corporate Administrative Contracting Officer (CACO), and the Defense Contract Management Agency (DCMA) concerning the adequacy of the offerors' financial and management systems.

The agency received five proposals by the October 4, 2011 closing date. A technical evaluation board (TEB) evaluated the proposals under factors 1-4; a source selection board (SSB) conducted the evaluation of factors 5-7; and a cost evaluation board (CEB) conducted the evaluation of cost/price. The SSB finalized its report on September 13, 2012; the TEB finalized its report on November 19, 2012; and the CEB completed its report on January 29, 2013. Ratings assigned to the proposals of the protester and Tetra Tech were as follows:

FACTOR	SHAW	TETRA TECH
Specialized Experience	Excellent	Excellent
Safety	Excellent	Excellent
Contract Management	Excellent	Excellent
Technical Approach (PTO 0001)	Good	Good
Past Performance	Excellent	Excellent
Commitment to Socio-Economic Programs	Excellent	Excellent
Financial and Management Systems	Marginal	Excellent
Cost/Price (Adjusted)	\$1,012,248	\$1,343,725

Agency Report (AR), Tab 10, Business Clearance Memorandum at 17.

Under factor 4, technical approach to PTO 0001, the TEB identified several strengths in the protester's proposal, as well as the following two weaknesses:

- [In its] proposal, Shaw states that soil field duplicate samples will be collected. Soil duplicate samples are not typically included in a quality control plan due to the potential heterogeneity of soils on site.
- [In its] proposal, Shaw states that project documents will be submitted to the California DTSC [Department of Toxic Substances Control] for review and comment. DTSC is not involved in the approval of documents for PTO 0001.

AR, Tab 7, TEB Report, at 17. Under factor 7, financial/management systems, the SSB identified the protester's government property management, compensation, estimating, and earned value management systems as strengths, but found weaknesses pertaining to its cost accounting standards, accounting, purchasing, billing, and labor systems. The weaknesses were based on the findings of a number of different DCAA/DCMA audits. While the evaluators characterized many of the fourteen identified weaknesses as minimal risk with low potential impact, they found four to be moderate risk and one to be of high risk.

Specifically, the weaknesses identified as moderate risk were as follows:

- Finding of noncompliance with CAS [Cost Accounting Standard] 418 and FAR [Federal Acquisition Regulation] Part 31 in DCAA audit report no. 01241-2011S19200001, dated 12 April 2011.
- Finding of noncompliance with CAS 418 in DCAA audit report 0241-2011R19200002, dated 10 November 2011.
- Finding in DCAA audit report no. 01241-2011S11070002 that the “internal control activities related to the accounting system and controls associated with Shaw E&I’s control environment and overall accounting system controls are not adequate and operating effectively,” and that the examination disclosed five significant deficiencies.
- Disapproval of Shaw’s purchasing system in DCAA flash report no. 01241-2011S12030001, dated April 2011. The evaluators noted that while the protester had implemented corrective action, there was moderate risk associated with the weakness until a follow-on audit confirming implementation of the corrective action had been performed.

AR, Tab 8, SEB Report at 33-34.

The weakness identified as high risk pertained to the protester’s billing system. The evaluators noted that DCAA flash report no. 01241-2010S11010002, dated September 2010, stated that Shaw’s “billing system practices require corrective action to improve the reliability of the costs billed on Government Contracts.” The evaluators further noted that the “main issue was that DCAA found final vouchers that exceeded their ceilings,” which “was a significant issue, as invoicing over a ceiling is very pertinent and applicable to this contract.” *Id.* at 34.

After the SSB completed its evaluation of factors 5-7 in mid-September 2012, agency personnel received a series of e-mail communications from the CACO pertaining to Shaw’s financial and management systems.¹ In his first e-mail message, dated September 25, 2012, the CACO transmitted a copy of a spreadsheet prepared by Shaw updating the status of the corrective actions that it had taken to address the DCAA/DCMA audit findings. The spreadsheet indicated that while a number of the audit findings were now closed, ten issues were still open; among the matters still open were the accounting system issue identified above as moderate risk and the billing system issue identified as high risk, and four new issues arising from audit reports issued after the proposal submission deadline. The CACO noted in his message that he had reviewed the spreadsheet and

¹ While the agency describes these communications as “unsolicited,” they followed a series of inquiries to the CACO from agency personnel soliciting information regarding various aspects of the protester’s financial and management systems.

confirmed its correctness and currency. The CACO also included a copy of a letter of the same date to Shaw in which he stated that he had determined that Shaw was no longer in noncompliance with CAS 418 as addressed in three DCAA audit reports, and that he had thus “dispositioned” the three reports, subject to later DCAA review of the corrective action implementation. AR, Tab 19, CACO Letter to Shaw, Sept. 25, 2012.

In a second e-mail, dated October 3, 2012, the CACO provided the agency contracting personnel with an update on the status of Shaw’s implementation of corrective actions in response to the accounting system audit report mentioned above (that is, audit report no. 01241-2011S11070002). The CACO advised that Shaw had implemented detailed corrective actions for all five areas, and that he considered its corrective action plan acceptable. The CACO further advised that he was requesting Board of Review authorization to find Shaw’s accounting system adequate for accumulating and billing costs under Government contracts, subject to a future accounting system review to verify the implementation of the corrective actions.

In a third e-mail, dated October 31, 2012, the CACO transmitted a copy of a letter that he had sent to Shaw the same day indicating that as a result of a follow-up Contractor Purchasing System Review conducted by DCMA during September 2012, he was approving the protester’s purchasing system.

In a fourth e-mail message, dated December 6, 2012, the CACO transmitted to the agency contracting specialist a further-updated version of the spreadsheet provided on September 25. The spreadsheet represented that only two of the audit findings remained open; one of the two was the accounting system review noted above. The CACO noted that the information provided in the spreadsheet was “complete and 100% accurate,” and that he had “absolutely no intention of considering the accounting system to be anything other than adequate.” AR, Tab 22, CACO Email to Agency Contract Specialist, Dec. 6, 2012.

On December 18, 2012, the SSB prepared a memorandum to the file summarizing the content of the above communications and their impact on the evaluation. The SSB expressed several concerns regarding the communications, including that Shaw was attempting to submit information to the board after the proposal submission date by routing the updates through DCMA. According to the board, it could not have considered the updates if they had been provided by Shaw directly. AR, Tab 9, Memorandum to File, Dec. 18, 2012, at 3. The SSB also expressed concern that Shaw had prepared the spreadsheets and there was no supporting documentation (i.e., official letters from DCMA and/or audits from DCAA), leaving the board unable to verify that issues had indeed been closed.

The SEB also concluded that taking the new information into account would not have changed Shaw’s rating of marginal for the financial/management system

factor. The board noted in the foregoing connection that (1) the December version of the spreadsheet indicated that two DCAA audit reports were still open; (2) the spreadsheet identified additional findings of weakness from audits performed after submission of Shaw's proposal that the SEB would "be required to consider" if it reevaluated on the basis of the updated information received after finalization of its report; and (3) in some instances, the detailed information in the spreadsheet did not confirm Shaw's representation that an issue was closed (that is, the detailed information indicated that Shaw's corrective action had not yet been evaluated by DCAA or DCMA). Id. at 4.

After reviewing the reports of the various evaluation boards, the source selection authority (SSA) selected Tetra Tech's proposal for award, finding that its proposal represented the best value to the government. AR, Tab 11, Source Selection Decision, May 13, 2013, at 5.² In comparing Tetra Tech's proposal to the protester's, the SSA found that the former's superiority under the financial/management systems factor was worth its additional cost. On June 13, the agency awarded a contract to Tetra Tech and notified the unsuccessful offerors of its action. The protester timely requested a debriefing, which the agency furnished on June 20. Shaw protested to our Office on July 1.

DISCUSSION

Shaw takes issue with the evaluation of its proposal under the technical approach to PTO 0001 and financial/management systems factors. The protester also argues that in making her source selection decision, the SSA unreasonably failed to consider the strengths in its proposal under the first six evaluation factors. We address these allegations below.

Evaluation Factor 4, Technical Approach to PTO 0001

Shaw argues that it was unreasonable for the evaluators to attribute a weakness to its proposal under the technical approach factor for its plan to collect duplicate field samples. The protester contends that while it may have exceeded the RFP's requirements by proposing to collect duplicate samples, proposing to exceed the solicitation's requirements may not reasonably be characterized as a weakness.

² On June 2, 2013, after the SSA had made her source selection decision, but prior to contract award, the CACO forwarded to the agency contracting specialist a copy of a DCAA audit report issued on May 31 finding that Shaw had "effectively implemented corrective actions to correct the significant deficiencies/material weaknesses identified in [audit report no. 01241-2011S11070002 dated December 29, 2011]." AR, Tab 23.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. Visual Connections, LLC, B-407625, Dec. 31, 2012, 2013 CPD ¶ 18 at 3. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. at 4. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. Id.

In response to the protester's challenge, the agency essentially asserted that no useful information is gained from testing duplicate samples as proposed by Shaw. The agency explained that the collection and testing of duplicate samples (i.e., two samples from the same location) yields useful data when the samples are drawn from a homogeneous medium such as water (since non-correlating results on the two tests would indicate deficiencies in the testing procedures). This is not the case, however, when one is dealing with a heterogeneous substance such as soil (a substance composed of different components mixed together in varying amounts) since non-correlating test results are likely due to the differences in the composition of the samples, regardless of whether there has been an error in the testing process. Given that the RFP here provides for award of a cost-type contract, it was reasonable for the evaluators to consider an aspect of the proposal that could potentially result in increased cost, without corresponding benefit, to be a weakness.

Shaw also argues that it was unreasonable for the evaluators to attribute a weakness to its proposal for its stated intention to prepare documents for submission to both the DTSC and the RWQCB. The protester contends that while the solicitation designated the RWQCB as the responsible regulatory agency for the project, submission of project plans to the DTSC might nonetheless be required. Shaw further argues that preparing a copy of the plans for submission to the DTSC would not make the copy prepared for submission to the RWQCB any less suitable, nor would preparation of a copy for the DTSC mean that it would have to be submitted.

The agency responded that the evaluators reasonably understood Shaw's proposal to prepare a copy of the plans for submission to DTSC as indicating Shaw's intention to submit the plan to DTSC. The agency also argues that it reasonably viewed this as a weakness since the solicitation did not provide for DTSC to have any role in reviewing the plans for the subject project. In this connection, the agency noted that given MCAS Miramar's status, the only site projects in which DTSC would be involved are those involving munitions, and PTO 0001 does not involve munitions. The agency further explained that involving DTSC in the project "would risk inconsistent regulatory direction" since the two regulatory bodies might furnish differing guidance, which would create uncertainty and increase schedule

delay. Agency Statement of Facts/Legal Analysis at 23. We have no basis to find the agency's evaluation in this regard unreasonable.

Evaluation Factor 7, Financial and Management System

Shaw argues that the evaluators unreasonably ignored the five e-mail messages sent by the CACO in rating its proposal as marginal under the financial and management factor. The protester contends that it was clear from these messages that virtually all of the issues identified as weaknesses in the SEB report had been resolved by the time of award.

The agency furnished a lengthy response to this allegation in its report, arguing, among other things, that (1) the e-mail communications in question were received after the SEB had finalized its report, and the evaluators were under no obligation to reopen the evaluation; (2) the information furnished with the e-mail messages was insufficient to demonstrate that a number of the issues had been officially dispositioned; (3) the e-mail communications were attempts by Shaw to modify its proposal, and the agency could not consider such modifications without allowing other offerors the opportunity to revise their proposals; and (4) the SEB did, in fact, consider the contents of the first four e-mails (as reflected in the memorandum to the file dated December 18, 2012) and concluded that Shaw's rating under the financial/management factor would still be marginal.

As noted above, the SEB noted that (1) the December version of the spreadsheet indicated that two DCAA audit reports were still open; (2) the spreadsheet identified additional findings of weakness from audits performed after submission of Shaw's proposal that the SEB would "be required to consider" if it reevaluated on the basis of the updated information received after finalization of its report; and (3) in some instances, the detailed information in the spreadsheet did not confirm Shaw's representation that an issue was closed (that is, the detailed information indicated that Shaw's corrective action had not yet been evaluated by DCAA or DCMA). AR, Tab 9, Memorandum to File, Dec. 18, 2012, at 4.³

In responding to the agency report, the protester took issue with each of the agency's first three arguments, but did not seek to rebut or otherwise address its argument that the evaluators did, in fact, consider the contents of the CACO's e-mail communications, but concluded that the rating under the financial/management factor would still be marginal. Since this agency argument

³ For obvious reasons, the December 18, 2012 memorandum to the file did not address the contents of the CACO's final e-mail communication of June 2, 2013. It was clearly reasonable for the evaluators not to consider the contents of this communication given that it was received after the SSA had made her award decision.

provides a reasonable response to the protester's complaint that the evaluators failed to consider the contents of the CACO's communications, which the protester has not sought to rebut, we will not further consider Shaw's objection in this regard.

Source Selection Decision

Finally, the protester argues that in making her source selection decision (SSD), the SSA failed to consider the strengths and weaknesses of the two proposals under evaluation factors 1-6, but rather simply assumed that because the two proposals had received equivalent ratings under the factors, they had no relevant strengths or weaknesses pertaining to these areas.

The record does not support the protester's allegation. In finding the proposals of Shaw and Tetra Tech "essentially equal" under factors 1-6, the SSA noted that the firms tied for first in their ranking under factors 1 through 4, but also acknowledged that there were "certain differences between the two offerors' proposals" for these factors, an observation that the SSA could not have made based on consideration of the ratings alone (since the ratings were identical). AR, Tab 11, SSD at 4. For factors 5 and 6, the SSA noted that both Shaw and Tetra Tech had outstanding past performance, significantly exceeded small business goals, and had "great historical small business support," while again acknowledging that there were "certain differences between the two offerors' proposals." Id. Moreover, with regard to factors 1 through 6, the SSA indicated that she concurred with the "analyses of ratings and risk assessments" and the "comparative analysis" of the SSB and TEB, which set forth, in detail, the strengths and weaknesses of the two proposals. Id. at 4-5. Given the SSA's finding of relative equality of the proposals under the first six factors, the SSA focused her tradeoff decision on what she characterized as the "clear distinction between the two firms" under factor 7, financial/management systems. Id. at 4. Accordingly, the SSA's decision focused on the specific strengths of Tetra Tech's proposal and concerns with Shaw's proposal under factor 7, which, in the SSA's view, justified paying the higher cost associated with Tetra Tech's proposal. Id. at 4-5.

To the extent the protester is arguing that the SSA failed to adequately document the basis for her finding that the two proposals were essentially equal under factors 1-6, source selection decisions must be documented, but there is no need for extensive documentation of every consideration factored into a tradeoff decision. ASRC Research & Technology Solutions, LLC, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 16. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Id. Because the SSD here meets this standard, we have no basis to conclude that the SSD was insufficiently documented.

The protest is denied.

Susan A. Poling
General Counsel