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Decision

Matter of: Global Readiness Enterprises

File: B-284714

Date: May 30, 2000

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Joshua A. Kranzberg, Esq., and Robert A. Russo, Esq., Department of the Army, for the agency.

C. Douglas McArthur, Esq., Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency's evaluation of proposals was consistent with solicitation terms, which provided that technical evaluation factors were more important than price, and where agency reasonably selected for award proposals of higher technically rated offerors (one slightly higher priced and one lower priced) as compared to protester's lower technically rated proposal.

DECISION

Global Readiness Enterprises (GRE) protests the award of contracts to Engineering and Professional Services, Inc. (EPS) and ManTech Telecommunications and Information Systems Corporation under request for proposals (RFP) No. DAAB07-99-R-G752, issued by the U. S. Army Communications-Electronics Command (CECOM), for field support services. GRE challenges the agency's evaluation of proposals and the agency's selection decisions.

We deny the protest.¹

¹ GRE requested the admission of an accounting expert under the protective order issued for this protest to assist in reviewing the record. Although the agency and the intervenor objected, contending that the protester failed to show how the expert

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The RFP, issued on May 4, 1999, contemplated the award of indefinite-delivery/ indefinite-quantity, time and materials contracts to perform Omnibus Logistics and Readiness Field Support Services, for a 1-year base period and four 1-year option periods. RFP at 3, 59. The RFP's executive summary advised offerors as follows:

The government plans to make up to three (3) awards from this solicitation. Each award will cover all Statement of Work (SOW) technical requirements. Two (2) awards will be Small Business Set-Asides, with at least one of these planned awards being made to an 8A Small Disadvantaged Business. The third award is planned to be made on an unrestricted basis.

Id. at 2-3.

The RFP advised small business prime offerors that they were required to perform 51 percent or more of the assigned work within their corporate entity or joint venture agreement; the balance of assigned work could be performed by team members/subcontractors. Id. at 3.

The RFP provided that the awards would be made to the offerors whose proposals offered the best values, considering technical evaluation factors, performance risks, prices, and small business participation plans. These evaluation factors were listed in descending order of importance. RFP amend. 1, at 11. The technical evaluation factor included two subfactors--sample tasks and management. As relevant here, the sample task subfactor was composed of six equally weighted sample tasks, which were designed to test the offeror's expertise and capabilities in responding to the types of situations that could be encountered during contract performance. Id. The RFP required offerors to prepare a 45-minute videotape oral presentation in responding to each sample task. Id. at 8-9. Responses to the sample tasks would be evaluated in terms of the offeror's understanding of the task, the feasibility of the offeror's approach, and completeness. Id. at 11.

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would provide any additional and necessary assistance in pursuing the merits of its protest, we found these objections to be insufficient. Absent any special concern over the sensitivity of the material or any reason to believe that the admission of an expert would pose an unacceptable risk of inadvertent disclosure, there is a strong policy in favor of permitting protesters to choose the assistance they deem necessary to pursue their protests. Bendix Field Eng'g Corp., B-246236, Feb. 25, 1992, 92-1 CPD ¶ 227 at 6-7. We therefore admitted the protester's expert over the objections of the agency and the intervenor.

In order to evaluate an offeror's performance risk, the RFP required offerors to describe recent (within the past 3 years) and relevant (in terms of scope) contracts. Id. Concerning price, attachment 2 to the RFP contained a list of 52 labor categories, with an estimated annual level of effort (total off-site and on-site hours) for each category. For each labor category, the RFP directed offerors to provide fully loaded labor rates, which would be multiplied by the corresponding level of effort. The RFP provided that the offeror's estimated other direct costs, plus G&A/material handling costs, would be added for each contract year. The sum of the basic and option years would equal an offeror's total evaluated price. Id. at 12. The RFP provided that the agency would use the labor categories and hours provided in each sample task, along with the rates provided in the price factor, to evaluate the price reasonableness of the sample tasks. Id. The RFP advised that awards would not necessarily be made to the lowest priced offerors.

The agency received seven proposals by the closing time on June 11. Only one small disadvantaged business--Offeror D--submitted a proposal. Contracting Officer's (CO) Statement at 2. Three small businesses, including GRE and EPS, and three large businesses, including ManTech, submitted proposals. More specifically, EPS submitted a proposal as a small business prime offeror, with ManTech and two other entities as contributing/supporting team members. Id. at 6. ManTech submitted a proposal as a large business prime offeror for the unrestricted competition, with EPS and another entity as contributing/supporting team members. Id. As relevant to this protest, the final ratings were as follows:

	GRE	EPS	ManTech	Offeror D
Technical	Acceptable	Good	Good	Acceptable
Sample Tasks	Acceptable	Good	Good	Acceptable
Management	Outstanding	Good	Outstanding	Acceptable
Performance Risk	Low	Low	Low	Low
Evaluated Price	\$398.4M	\$400.4M	\$355.9M	\$444.9M
Small Business Plan	Outstanding	Acceptable	Acceptable	Outstanding

Agency Report (AR), Tab 5, Source Selection Decision Document, at 1.

The agency awarded a contract to Offeror D, the only small disadvantaged business which participated in this procurement.² The agency also awarded a contract to EPS, which submitted the best overall proposal by a small business offeror. Id. With respect to this award, the agency determined that the proposal of EPS was "of such significantly superior technical quality that it [was] worth paying approximately 0.5% (\$2.0M) more than the proposal submitted by [GRE]." Id. The agency concluded that EPS "demonstrated efficiencies which [would] result in a total cost savings over

² GRE does not protest the award to Offeror D.

the five (5) year life of this time and materials service contract that will more than totally offset the minimal difference in the total evaluated price.” Id. at 2. Finally, the agency awarded a contract to ManTech, a large business which submitted a technically superior, significantly lower priced proposal. Id.

Relying primarily on the similarity of the sample task presentations by EPS and ManTech and the agency’s evaluations thereof, GRE complains that the agency, in essence, awarded two of the three contracts to the same entity--the team of EPS and ManTech, which simply “flip-flopped” roles as between the small business set-aside and unrestricted portions of the procurement. Protest at 11. GRE maintains that these awards to EPS and ManTech will effectively preclude competition for future task orders because these firms will be “competing against themselves,” thus defeating the purpose of multiple awards.³ Protester’s Comments at 2.

Despite the similarity of their sample task presentations and the evaluations thereof, the record does not support GRE’s position that EPS and ManTech were the same entity. In this regard, EPS and ManTech each submitted a separate proposal for evaluation, with evaluated prices based on different labor rates and different proportions of team member participation. For example, while EPS, the small business prime contractor, teamed with ManTech and two other entities, EPS was required to perform 51 percent or more of the work with its own employees under the terms of the RFP. In contrast, ManTech, the large business prime contractor, teamed with EPS and one other entity, yet there was no corresponding RFP

³ GRE also argues that the teaming arrangements between EPS and ManTech create organizational conflicts of interest. However, there is no basis to find such conflicts here. The fact that two members of a team submit separate prime contractor proposals, each relying on the other member of the team as a subcontractor, neither constitutes nor creates an organizational conflict of interest. GRE points to nothing in Subpart 9.5 of the Federal Acquisition Regulation that would support its position in this regard. Further, neither EPS nor ManTech wrote the solicitation or the statement of work and neither firm will be evaluating the other’s work. Under these circumstances, there simply is no basis to find an organizational conflict of interest.

Moreover, the specific conflict of interest alleged by GRE--manipulation by EPS and ManTech of the competitions for individual task orders--is a matter to be addressed during performance. Specifically, the RFP’s organizational conflict of interest clause requires the contractor to fully disclose to the contracting officer any actual or potential conflict which arises after award with regard to any task order or modification. RFP at 34. Compliance with the RFP’s organizational conflict of interest clause involves a matter of contract administration, which is within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims, not our Office. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2000).

restriction on which of ManTech's own employees could perform the work. In addition, EPS and ManTech submitted different management and small business participation plans and different past performance information. Since nothing in the RFP prohibited teaming arrangements, we have no basis to object to the agency's decision to award separate contracts to two prime contractors which also had roles as team members under each of the other's prime contracts.

In any event, even if we assume, arguendo, that EPS and ManTech are the same entity and that (after two awards are made, one to that EPS/ManTech entity and the other to Offeror D) GRE would be in line for an additional (third) award, GRE cannot establish the prejudice necessary for our Office to sustain the protest, because no third award was required. In this regard, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). In this case, the RFP's executive summary advised that the agency "plans to make up to three (3) awards." Although the RFP expressed the agency's plan or intention to award up to three contracts, this expression of plan or intention cannot reasonably be read as stating a legal requirement for three multiple awards. Rather, the agency's expression of a plan or intention merely signified the agency's expectations and did not create a legal obligation to award three contracts. See Canadian Commercial Corp./Liftking Indus., Inc., B-282334 et al., June 30, 1999, 99-2 CPD ¶ 11 at 3, 9 (similar language that "[t]he government intends to award up to two contracts" did not obligate the agency to make two awards). In other words, there was no requirement in the RFP that a third award be made.⁴

GRE next complains that its technical proposal, based on its responses to the sample tasks, was unreasonably downgraded because the agency did not follow the rating scheme set forth in the source selection evaluation plan, which provided definitions for the ratings of "acceptable," "good," and "outstanding" in terms of the degree to which proposal disadvantages offset proposal advantages. An "acceptable" proposal was defined as offering "major or minor advantages that are offset by disadvantages"; a "good" proposal was defined as offering "some major or numerous minor advantages that are not offset by disadvantages"; and finally, an "outstanding"

⁴ GRE argues that an award to EPS cannot be considered a small business award because of that firm's cooperation with ManTech and that under the terms of the RFP, an award still needs to be made to a small business, *i.e.*, GRE. We disagree. As explained above, the award to EPS is subject to the rules governing awards to small businesses and that firm's cooperation with ManTech does not render the two firms' relationship a violation of the terms of the RFP or otherwise change the size status of EPS.

proposal was defined as offering “numerous major advantages that are not offset by disadvantages.” AR, Tab 18, Source Selection Evaluation Plan, at 29. GRE states that in total, its proposal received 7 major and 17 minor advantages and 1 major and 8 minor disadvantages. On this numerical record, GRE contends that it should have received a rating of good, not merely acceptable, because its proposal disadvantages could not possibly offset its proposal advantages. Protest at 8; Protester’s Comments at 7.

We conclude that GRE has failed to articulate any basis to question the agency’s evaluation of its technical proposal. We point out that the RFP did not describe any type of adjectival rating scheme for the evaluation of technical proposals. Rather, the scheme described above appeared solely in the agency’s source selection evaluation plan which was furnished to the protester at its debriefing. An agency’s source selection evaluation plan constitutes an internal agency guideline, and failure to adhere to it does not provide a basis for protest. Mid Pacific Envtl., B-283309.2, Jan. 10, 2000, 2000 CPD ¶ 40 at 6.

Moreover, GRE does not meaningfully challenge any aspect of the agency’s evaluation of technical proposals. For example, in its initial protest, GRE specifically contended that the agency improperly evaluated its response to sample task 3, which involved new equipment training and field support at three separate sites. In its administrative report, the agency explained that it downgraded GRE’s proposal because the firm failed to provide adequate labor hours or personnel for two of the sites and that this omission constituted a major proposal disadvantage.⁵ CO Statement at 4; AR, Tab 6, Source Selection Authority Decision Briefing, at 17. In its comments on the agency’s administrative report, GRE did not elaborate upon this contention, apparently conceding that the agency reasonably evaluated and downgraded its proposal based on its limited response to sample task 3. See Protester’s Comments at 7 (“[f]ive of the six sample tasks are clearly [good] (at the least) with only Task 3 possibly remaining at the [acceptable] level”). GRE also does not provide any basis to question the higher ratings (more advantages and fewer disadvantages) assigned to the proposals submitted by EPS and ManTech. On this record, we have no basis to disturb the agency’s evaluation of technical proposals.

⁵ Contrary to GRE’s assertion, the record contains reasonable contemporaneous documentation of the agency’s evaluation and selection decisions. For example, the record contains narrative descriptions of the advantages and disadvantages in each offeror’s proposal corresponding to the RFP’s evaluation scheme. AR, Tabs 7-9, Evaluation Documentation for GRE, EPS, and ManTech. The record also contains detailed evaluation briefing slides used by the source selection authority and this individual’s narrative explanation of the tradeoff decision between GRE and EPS, which resulted in a determination that it was worth paying a slight premium to EPS for its higher technically rated proposal.

In addition, GRE challenges the evaluation of price proposals, contending that because the agency failed to calculate a “composite rate” for each offeror’s overall bid and sample tasks, the agency failed to recognize that GRE’s composite rate was less than that of EPS and ManTech. Protester’s Comments at 5. As noted above, for each labor category listed in the RFP, offerors were required to apply their fully loaded labor rates to the estimated levels of effort. The RFP provided that the offeror’s estimated other direct costs, plus G&A/material handling costs, would be added for each contract year, and that the sum of the basic and option years would equal an offeror’s total evaluated price. The RFP further stated that the agency would use the labor categories and hours provided in each sample task, along with the rates provided in the price factor, to evaluate the price reasonableness of the sample tasks. The calculation of a “composite rate” was not contemplated by the terms of the RFP and, therefore, such a rate reasonably was not calculated or considered during the evaluation.

Finally, GRE complains that the agency failed to perform a meaningful price reasonableness analysis of the sample tasks. The record shows, however, that each sample task for each offeror was examined to determine whether an offeror’s proposed approach and technical assumptions were reasonable and whether an offeror’s labor categories were consistent with the proposed approach and technical assumptions. See AR, Tabs 7-9, Evaluation Documentation for GRE, EPS, and ManTech. For example, with respect to GRE, for sample task 3, the agency commented that a major disadvantage was that “[h]ours given do not add up for a full three site fielding and training mission.” The agency believed that GRE did not provide enough hours in the labor categories cited to complete this task at all three sites. In particular, “[GRE] listed hours and personnel but did not include schedules for their planned training. The hours and personnel they did show were not adequate for the fielding and training requirements.” AR, Tab 7, Evaluation Documentation for GRE, Sample Task 3. As a result of GRE’s “misconception,” the agency “adjusted for evaluation purposes only” GRE’s manhours “to project the reasonableness of [GRE’s] proposal if all three sites had been furnished.” Id. In contrast, the agency took no exception to the hours and personnel reflected in the sample task responses of EPS and ManTech. The agency concluded that these responses were within the government’s manhour estimates for the offerors’ proposed approaches and technical assumptions, and the labor categories were consistent with the offerors’ proposed approaches and technical assumptions. See AR, Tabs 8-9, Evaluation Documentation for EPS and ManTech.

In sum, the record shows that the price reasonableness of each offeror’s sample task responses was determined based upon the specific approaches and assumptions made by the particular offeror. See Agency Statement, Apr. 19, 2000, at 1-2. Contrary to GRE’s assertion, the results of the sample task price reasonableness evaluations were reasonably documented and, in the case of GRE, we think the agency was reasonably concerned with the labor hours and personnel proposed by the firm for accomplishing some of the sample tasks.

Accordingly, consistent with the terms of the RFP, we conclude that the agency reasonably awarded contracts to EPS and ManTech, both of which submitted technically superior proposals. GRE, which submitted a lower technically rated, lower priced proposal, has failed to demonstrate the unreasonableness of the agency's decision to pay a slight premium to EPS, and GRE has provided no basis to object to the award to ManTech, which submitted a lower priced proposal.

The protest is denied.

Comptroller General
of the United States