



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: The Mangi Environmental Group, Inc.

File: B-401783

Date: November 20, 2009

James I. Mangi for the protester.

Brian Kuehl, The Clark Group, LLC, for the intervenor.

Thomas J. Mitchell, Esq., Department of Veterans Affairs, for the agency.

Eric M. Ransom, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency evaluation and source selection decision were flawed where agency made award to higher-rated, significantly higher-priced offeror is denied where record shows that evaluation and source selection decision were reasonable and in accordance with stated evaluation criteria.

DECISION

The Mangi Environmental Group, Inc., of McLean, Virginia, protests the award of a contract to The Clark Group, LLC, of Washington, D.C., by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. VA-101-08-RP-0253, for revision of the agency's National Environmental Policy Act (NEPA) implementing regulations.

We deny the protest.

The RFP requested proposals from environmental consulting firms to evaluate the adequacy and relevance of the agency's existing NEPA implementing regulations, and to clarify and revise the regulations to incorporate guidance from the Council on Environmental Quality and better align agency NEPA procedures with decision making processes. The RFP was issued on February 20, 2009, with a closing date of March 19. The RFP required the submission of separate technical and price proposals, and set forth five technical evaluation factors in descending order of importance:

1. Approach and Work Plan
2. Key Personnel
3. Experience on Similar Size and Scope Efforts
4. Past Performance
5. Capacity to Perform

RFP at 17-18. The RFP also advised offerors that “all technical factors, when combined, are significantly more important than cost.” *Id.* at 17. Four proposals were received by the closing date, including the proposals submitted by Mangi and Clark.

The contracting officer conducted an initial review of the four proposals and then submitted them to the technical evaluation board (TEB) for its review. After receiving the results of the TEB’s analysis on May 14, the contracting officer established a competitive range consisting of the proposals of three of the four offerors, including Mangi and Clark. The contracting officer then conducted discussions with those three firms. Final revised proposals (FRP) were received from each firm on June 25, and were submitted to the TEB for evaluation.

On July 8, the contracting officer received the TEB’s final report, which indicated that Clark’s proposal was highest rated technically, and that Mangi’s proposal was second. The contracting officer reviewed the FRPs and the TEB’s report, and prepared a price negotiation memorandum and source selection decision (SSD). The SSD indicated that Clark’s proposal was highest priced, at \$399,959.55, and that Mangi’s proposal was lowest priced, at \$87,498. Agency Report (AR), Tab 10, SSD at 11. In the SSD, the contracting officer performed a price/technical trade-off, and concluded that Clark’s highest rated, highest priced proposal represented the best value. *Id.* at 18. The award was made to Clark on July 28. Mangi then requested a post-award debriefing, which occurred on August 12. This protest followed on August 17.

In its protest, comments, and supplemental filings, Mangi asserts that the SSD was flawed in that no technical advantage offered by Clark could reasonably justify its significantly higher price, that the debriefing’s emphasis on Mangi’s relatively limited experience in NEPA regulation writing was not consistent with the areas the agency raised with Mangi in discussions, and that the agency may have improperly based its conclusion that Mangi materially underestimated the level of effort required on Mangi’s low proposed price, rather than its proposed labor hours.¹

¹ Mangi was not represented by counsel in this protest. Accordingly, our Office did not issue a protective order, and Mangi was provided only a redacted version of the agency report. In resolving the protest, we reviewed in camera unredacted copies of all evaluation and source selection documents and have based our decision on the

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In reviewing protests of an agency's evaluation and source selection decision, we will not reevaluate proposals; rather, we will review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. Keeton Corrections, Inc., B-293348, Mar. 4, 2004, 2005 CPD ¶ 44 at 6. In a negotiated procurement, as here, the procuring agency has the discretion to select a higher priced, more highly rated proposal, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566 at 4. Based on our review of the record here, we find no basis for sustaining the protest.

With regard to Mangi's allegation that any technical advantages offered by Clark could not reasonably justify Clark's significantly higher price, given Mangi's apparent technical acceptability and much lower price, we disagree. The RFP here stated not only that "all technical factors when combined, are significantly more important than cost," but also that the technical factors were weighted in descending order of importance. RFP at 17. Mangi argues in its filings that, based on its debriefing, its proposal had only one principal weakness: its relatively limited NEPA regulation writing experience. While our review of the record indicates that many of the weaknesses the agency noted in Mangi's proposal in fact are rooted in Mangi's limited NEPA regulation writing experience, this issue reasonably resulted in Mangi's proposal being assessed weaknesses under each of the technical evaluation factors, including the most heavily weighted factors.

For example, the SSD indicates that Mangi was assessed a weakness under the most heavily weighted factor, "approach and work plan," based on its limited NEPA regulation writing experience, and was also assessed a "critical" weakness under the second most heavily weighted factor, "key personnel," because only two of Mangi's key staff had even nominal experience in regulatory writing. AR, Tab 10, SSD at 17. Thus, the general issue of Mangi's lack of NEPA regulation writing experience reasonably led the agency to find serious weaknesses in its proposal under the two most important evaluation factors. In contrast, the SSD's conclusions regarding Clark's proposal, and Clark's proposal itself, reveal that Clark possessed significantly more experience, and experience that was significantly more recent and more

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full record. As much of the information reviewed by our Office is source selection sensitive and proprietary in nature, our discussion of the evaluation is necessarily limited. For example, our decision is deliberately general in describing the contents of Clark's proposal. In addition, many of Mangi's allegations are too speculative to state a sufficient legal or factual basis for protest and thus will not be discussed further. For example, Mangi asserts that the government estimate is flawed, but presents no support for its contention.

specific to NEPA regulation rewriting, than that offered in Mangi's proposal. AR, Tab 10, SSD at 18; AR, Tab 6, Clark FRP, at 28. Accordingly, the record shows that the contracting officer's conclusion that Clark's proposal was "far superior technically," and the decision that Clark's proposal represented the best value to the government, were reasonable and in accordance with the evaluation scheme set forth in the RFP. AR, Tab 10, SSD at 18.

With regard to discussions, Mangi alleges that the agency's emphasis in the debriefing on Mangi's lack of NEPA regulation writing experience was not consistent with the areas raised in discussions, which it asserts were primarily focused on level of effort issues. Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7. However, agencies satisfy this requirement where they lead offerors into the areas of their proposals that require amplification, Professional Perf. Dev. Group, Inc., B-279561.2 et al., July 6, 1998, 99-2 CPD ¶ 29 at 5; agencies are not required to afford offerors all-encompassing discussions. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 4. Here, our review indicates that the discussions conducted by the agency were clearly adequate to put Mangi on notice that its limited experience in regulatory writing generally, as well as specifically with respect to NEPA, was considered a weakness.

For example, the discussions document informed Mangi that the agency was concerned that Mangi had "not so much experience with NEPA regulation writing," and "not a lot of NEPA rewriting experience." AR, Tab 14, Mangi Discussions, at 1. Further, the discussions document informed Mangi of the agency's concern that Mangi's key staff "have experience with NEPA, but not with writing regulations," and that a "review of resumes of key staff indicates that only two have only nominal experience in regulatory writing." Id. The discussions also noted that the agency did not consider regulatory writing to be a skill that could be learned "on the job." Id. Finally, the discussions document also noted that Mangi's NEPA regulation writing experience was "older," and that Mangi was "lacking recent NEPA rewrite experience." Id. at 2. Accordingly, we cannot conclude that the agency's discussions with Mangi were misleading or insufficient in this regard.²

² Mangi also contends that the debriefing did not seem to reflect its FRP, but rather its original proposal and the agency's discussion questions. Mangi thus questions whether its FRP was reviewed by the agency. The record here contains a TEB evaluation of Mangi's FRP. The TEB evaluation indicates that several weaknesses were deleted by the agency following email clarifications and the FRP; however, the evaluation also notes in some areas that despite Mangi's response, the weaknesses assessed against Mangi's original proposal remained appropriate. AR, Tab 8, TEB Evaluation, at 7-8. The record thus shows that the TEB reviewed Mangi's FRP, but
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Finally, through a supplemental agency filing, Mangi learned that the agency considered its proposed price to be unrealistically low, “indicating critical failure to understand the degree of effort . . . required to successfully complete the work.” AR, Tab 10, SSD at 17. In response, Mangi questioned whether the agency conducted a reasonable price analysis, stating that it may have been penalized for offering a lower overhead and lower hourly rates if the agency considered only its price, and not the actual number of labor hours that it proposed. Based on our review of the record, we find that the agency’s conclusion was reasonable. In addition to being far lower than the awardee’s price, Mangi’s proposed price was substantially below both the proposed price of the next lowest offeror in the competitive range and the independent government cost estimate. AR, Tab 10, SSD at 11. With regard to Mangi’s allegation that the agency may have improperly failed to consider the actual number of labor hours that Mangi proposed, our review of the record indicates that the agency was aware of the number of labor hours that Mangi proposed. The agency informed Mangi in discussions that its proposed labor hours may have been too low, AR, Tab 14, Mangi Discussions, at 2, and Mangi’s FRP in fact proposed significantly fewer labor hours than the Clark FRP selected by the agency as the best value. AR, Tab 6, Clark FRP, at 3.

In sum, we conclude that the record shows that the selection decision was reasonable and in accordance with the RFP, that the agency’s discussions with Mangi were not misleading or insufficient, and that the agency reasonably determined that Mangi’s proposed price indicated a failure to understand the degree of effort required.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

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considered several of Mangi’s responses to the agency’s discussion questions to be inadequate.