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United States Government Accountability Office
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Decision

Matter of: Alutiiq Global Solutions

File: B-299088; B-299088.2

Date: February 6, 2007

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Andrew P. Hallowell, Esq., and Frank C. Gulin, Esq., Pargament & Hallowell, PLLC, for TW & Company, Inc.; David B. Dempsey, Esq., Kristen E. Ittig., Esq., and David J. Craig, Esq., Holland & Knight LLP, for Chenega Security & Protection Services, LLC; Stuart B. Nibley, Esq., Michael J. Askew, Esq., and Emily A. Jones, Esq., Thelen Reid Brown Raysman & Steiner LLP, for Doyon Security Services, LLC, intervenors.
Capt. Sean M. Connolly and Peter D. DiPaola, Esq., Department of Army, for the agency.
Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where there is no evidence that the contracting officer ignored relevant information in making affirmative determinations of responsibility regarding the awardees.

2. Protest allegation challenging agency's evaluation of protester's proposal is denied where the alleged evaluation error did not result in competitive prejudice to protester.

3. Protester is not an interested party to challenge evaluation of awardee's proposal where record shows that another firm, not the protester, would be in line for award if protester's challenge were sustained, and protester does not challenge evaluation of the other firm's proposal.

DECISION

Alutiiq Global Solutions protests the award of contracts to TW & Company, Inc., Chenega Security & Protection Services, LLC (Chenega SPS), and Doyon Security Services, LLC under request for proposals (RFP) No. W911SO-06-R-0019, issued by the Army Northern Region Contracting Center, Department of the Army, for security

guard services. Alutiiq argues that the agency's evaluation of offerors' proposals and source selection decision were improper.

We deny the protest.

BACKGROUND

The RFP, issued on July 21, 2006, as a section 8(a) set-aside,[1] contemplated the award of up to three indefinite-delivery/indefinite-quantity contracts for a base year with four 1-year options to provide security guard services in accordance with the solicitation's performance work statement (PWS) at various Army installations within three defined geographic regions--Northeast, West, and Pacific Coast. The RFP established six evaluation factors: mission capability; personnel; experience; past performance; small business participation; and price.[2] The solicitation informed offerors that the first four evaluation factors were of equal importance, and were more important than the small business participation and price evaluation factors. Additionally, all nonprice evaluation factors, when combined, were significantly more important than price. RFP at 109. Contract award for each geographic region was to be made to the responsible offeror whose proposal was determined to be most advantageous to the government based on consideration of all evaluation factors. Id.

Fifteen offerors, including Alutiiq, TW, Chenega SPS, and Doyon, submitted proposals for one or more geographic regions by the August 11 closing date. Alutiiq, TW, and Chenega SPS proposed for all three regions, while Doyon proposed only for the Pacific Coast region.[3]

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[1] Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (2000), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.800(a). Department of Defense agencies have been delegated authority to enter into 8(a) contracts on behalf of the SBA. Department of Defense FAR Supplement (DFARS) § 219.800(a).

[2] The RFP established evaluation subfactors with regard to the mission capability, personnel, and past performance factors. The solicitation also set forth the Army's planned evaluation rating scheme. Specifically, the RFP stated that proposals would be rated under all factors, subfactors, and overall, using an adjectival rating system (i.e., very good, satisfactory, marginal, unacceptable, or neutral with regard to past performance), and provided definitions for each adjectival rating. RFP at 109-11.

[3] In instances where an offeror proposed for more than one geographic region, the RFP required the offeror to submit one technical proposal (all geographic regions utilized the same PWS) and a separate price proposal for each region. RFP at 101.

An agency source selection evaluation board (SSEB) evaluated offerors' technical proposals using the adjectival rating system set forth in the RFP. On August 25, the SSEB provided the source selection authority (SSA) with its evaluation ratings of offerors' technical proposals, Agency Report (AR), Tab 11, SSEB Technical Evaluation Report, and the SSA also received a separate evaluation of offerors' prices. Id., Tab 12, Price Evaluation Report. The technical and price evaluation ratings of offerors' proposals for each geographic region were as follows:

Offerors (Northeast Region)[4]	**Overall Technical**	**Price**
TW	Very Good	$79,343,586
[Offeror A]	Very Good	$83,518,100
Chenega SPS	Very Good	$86,571,900
Alutiiq	Very Good	$92,204,328
[Offeror B]	Very Good	$99,560,147

Offerors (West Region)[5]	**Overall Technical**	**Price**
Chenega SPS	Very Good	$51,074,036
TW	Very Good	$55,279,842
[Offeror B]	Very Good	$58,918,566
[Offeror A]	Very Good	$60,778,048
Alutiiq	Very Good	$61,951,644

[4] Six additional offerors submitted proposals for the Northeast region. All received overall technical ratings of no higher than satisfactory, and all were higher-priced than TW. Id., Tab 13, SSA Briefing, at 10.

[5] Six additional offerors submitted proposals for the West region. All received overall technical ratings of no higher than satisfactory, and all were higher-priced than Chenega SPS. Id., Tab 13, SSA Briefing, at 11.

Offerors (Pacific Coast Region)[6]	Overall Technical	Price
Doyon	Very Good	$66,750,156
Chenega SPS	Very Good	$67,682,445
TW	Very Good	$70,076,335
Alutiiq	Very Good	$80,311,929

Id., Tab 13, SSA Briefing, at 10-12.

The technical evaluation ratings of Alutiiq's proposal and its proposed prices compared to those of the three awardees is as follows:

Factor	Alutiiq	TW	Chenega SPS	Doyon
Mission Capability	Very Good	Very Good	Very Good	Very Good
Personnel	Very Good	Very Good	Very Good	Very Good
Past Experience	Very Good	Very Good	Very Good	Very Good
Past Performance	Very Good	Very Good	Very Good	Very Good
Small Business Participation	Satisfactory	Very Good	Satisfactory	Satisfactory
Overall	Very Good	Very Good	Very Good	Very Good
Price (Northeast)	$92,204,328	**$79,343,586**	$86,571,900	N/A
Price (West)	$61,951,644	$55,279,842	**$51,074,036**	N/A
Price (Pacific Coast)	$80,311,929	$70,076,335	$67,682,445	**$66,750,156**

Id., Tab 14, Source Selection Decision, at 3.

Both Doyon and another offeror, Santa Fe Protective Services, identified Coastal International Security (CIS) as their subcontractor for various aspects of the security guard services. Id., Tab 8, Doyon's Proposal, Vol. I, Technical Proposal, Executive Summary, at 1; Tab 11, SSEB Technical Evaluation Report, at 24. Doyon and Santa Fe did not, however, propose on the same geographic regions: Doyon proposed for only the Pacific Coast region, while Santa Fe proposed for only the Northeast and West regions. Id., Tab 14, Source Selection Decision, at 3.

Prior to the agency's award determination, the contracting officer recognized that the Doyon and Santa Fe technical proposals were nearly identical to each other, and

[6] Eight additional offerors submitted proposals for the Pacific Coast region. All received overall technical ratings of no higher than satisfactory, and all but one were higher-priced than Doyon. Id., Tab 13, SSA Briefing, at 12.

that both offerors had identified CIS as their primary subcontractor.[7] As a result, the contracting officer made the following inquiry of both offerors:

> In regards to the above solicitation, the Federal Acquisition Regulation (FAR) requires that I make a responsibility determination. In reviewing the proposals, I note that your proposal is virtually identical to the proposal of [Doyon, or Santa Fe]. . . . In order to alleviate this concern, please address this issue and explain your relationship with [Doyon, or Santa Fe] and Coastal International Security.

Id., Tab 25, Contracting Officer's Memorandum for Record, Oct. 18, 2006.

In its reply, Doyon informed the contracting officer that while it had entered into a Department of Defense (DOD) Mentor-Protégé Program[8] relationship with CIS, and had relied on CIS to jointly draft Doyon's technical proposal, Doyon had no relationship with Santa Fe and had not been privy to Santa Fe's pricing. Id., Tab 26, Letter from Doyon to Contracting Officer, Oct. 16, 2006. Similarly, Santa Fe informed the contracting officer that while it had shared operational information with CIS, and had relied on CIS for proposal preparation, Santa Fe had neither business nor personal relationships with Doyon and never saw Doyon's proposal. Id., Tab 27, Letter from Santa Fe to Contracting Officer, Oct. 17, 2006. Based on the responses received, the contracting officer concluded that CIS's participation in the proposals of both Doyon and Santa Fe was not improper. Id., Tab 25, Contracting Officer's Memorandum for Record, Oct. 18, 2006.

TW's proposal identified Chenega Integrated Systems, LLC (Chenega IS) as its primary subcontractor. Id., Tab 6, TW's Proposal, Vol. II, Technical Proposal, at 5. Chenega IS is a different business entity than offeror Chenega SPS, although both firms share a common corporate parent, Chenega Corporation.[9] After the protest was filed, the contracting officer sought clarification from offerors TW and Chenega SPS regarding their relationship with Chenega IS. Contracting Officer's Statement, Dec. 12, 2006. Chenega SPS's president informed the contracting officer that there

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[7] The contracting officer found that Doyon's and Santa Fe's price proposals were not the same, however, as the offerors had proposed on different regions. AR, Tab 25, Contracting Officer's Memorandum for Record, Oct. 18, 2006.

[8] The DOD Mentor-Protégé Program provides incentives for DOD contractors to assist protégé firms in enhancing their capabilities and to increase participation of such firms in government and commercial contracts. DFARS § 219.7100.

[9] By contrast, Chenega SPS identified Wackenhut Services Inc., and not Chenega IS or Chenega Corporation, as its primary subcontractor. AR, Tab 7, Chenega SPS's Proposal, Vol. I, Technical Proposal, at 10.

were "absolutely no discussions with TW and/or [Chenega IS] on pricing or the composition of the technical proposal" for the solicitation here.[10] Id., attach. 1, Email from Chenega SPS to Contracting Officer, Dec. 11, 2006, at 2. TW also informed the contracting officer that it had had no contacts with Chenega SPS (which it viewed as a competitor to itself and partner Chenega IS), including no interaction regarding the pricing of its proposal here. Id., attach. 2, Letter from TW to Contracting Officer, Dec. 12, 2006, at 4.

On October 23, the agency awarded contracts to TW, Chenega SPS, and Doyon for the Northeast, West, and Pacific Coast regions, respectively. This protest followed.

DISCUSSION

Alutiiq alleges that the contracting officer's responsibility determinations regarding Chenega, Doyon, and TW were flawed insofar as the contracting officer failed to properly consider substantial evidence of price collusion among the awardees.[11] Alutiiq also protests that the agency's evaluation of Doyon's proposal under the past performance and experience factors was unreasonable, and that the agency's evaluation of Alutiiq's proposal under the small business participation factor was improper.[12] Alutiiq contends that had the agency properly evaluated offerors' proposals, it would have awarded all three contracts to Alutiiq.

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[10] Chenega SPS's president also stated that he was the sole approver of the technical and price proposals submitted by the firm, and that neither he nor his staff ever discussed any content or strategy with TW or Chenega IS employees. Id., attach. 1, Email from Chenega SPS to Contracting Officer, Dec. 11, 2006, at 2.

[11] Alutiiq also protested that TW, Chenega SPS, and Doyon were ineligible for award because they had violated FAR § 52.203-2, Certificate of Independent Price Determination, Protest, Nov. 20, 2006, at 5; this basis of protest was later withdrawn. Protester's Response to Agency Dismissal Request, Nov. 30, 2006, at 1.

[12] Alutiiq also originally protested that: 1) the agency's evaluation of TW's and Chenega SPS's past performance and experience was improper; 2) the agency failed to properly evaluate all awardees' proposals under the mission capability and personnel evaluation factors; 3) the agency failed to properly evaluate Alutiiq's proposal under a personnel subfactor; 4) the agency failed to conduct a proper best value determinations as part of its source selection decisions; and 5) the agency's evaluation of Doyon's proposal was improper because Doyon was unable to comply with FAR § 52.219.14, Limitations on Subcontracting. We previously dismissed these protest issues as lacking adequate detail and factually and legally insufficient. GAO Facsimile to Parties, Nov. 14, 2006.

Responsibility Determination Issue

Alutiiq first challenges the contracting officer's responsibility determinations regarding Doyon, TW, and Chenega SPS. Specifically, the protester contends that, in order to be considered a responsible contractor, an offeror is required to propose prices independently and without sharing price information with other competitors. Alutiiq argues that TW and Chenega SPS could not have priced their proposals independently of each other, as TW had proposed Chenega IS as its primary subcontractor. Likewise, the protester argues that Doyon and Santa Fe could not have priced their proposals independently as both proposed CIS as their subcontractor. Alutiiq argues that in light of the fact that the offerors must have shared price information, the contracting officer's responsibility determination was flawed for lack of investigating whether any price collusion occurred. Protest, Nov. 30, 2006, at 7-9.

GAO will not consider protests challenging affirmative determinations of responsibility except under limited, specified circumstances--where it is alleged that definitive responsibility criteria in the solicitation were not met or evidence is identified that raises serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2006); American Printing House for the Blind, Inc., B-298011, May 15, 2006, 2006 CPD ¶ 83 at 5-6; Government Contracts Consultants, B-294335, Sept. 22, 2004, 2004 CPD ¶ 202 at 2. This includes protests where, for example, the protest includes specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Universal Marine & Indus. Servs., Inc., B-292964, Dec. 23, 2003, 2004 CPD ¶ 7 at 2; Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 4. Here, Alutiiq has not alleged that definitive responsibility criteria were not met and, as detailed below, its only evidence that the contracting officer failed to consider available relevant evidence in determining the awardees responsible is the speculation that TW, Chenega SPS, and Doyon did not price their proposals independently. This is not, in our view, a proffer of evidence sufficient to raise serious concerns that the contracting officer ignored relevant information in making her responsibility determinations.

The record indicates that the contracting officer inquired into Doyon's and Santa Fe's reliance on CIS and gave reasonable consideration to the information the protester contends she failed to review. See Triple H Servs., B-298248, B-298248.2, Aug. 1, 2006, 2006 CPD ¶ 115 at 3. Likewise, with respect to Chenega SPS and TW, the contracting officer reasonably considered the information the protester contends she failed to review; accordingly, there simply is no evidence showing that the contracting officer ignored the information on which the protester bases its challenge to the affirmative determinations of responsibility.

Moreover, the facts relied on by the protester here--that Doyon and Santa Fe had a common subcontractor, and that Chenega SPS and Chenega IS (TW's subcontractor) have common corporate ownership--do not constitute information that would be expected to have a strong bearing on whether the awardees should be found responsible, as required to trigger our review under 4 C.F.R. § 21.5(c). Universal Marine & Indus. Servs., Inc., supra; Verestar Gov't Servs. Group, supra. In this regard, the requirement that competing concerns prepare their offers independently and without consultation with each other does not preclude competitors from proposing common subcontractors. McCombs Fleet Servs., B-278330, Jan. 16, 1998, 98-1 CPD ¶ 24 at 4; Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83 at 2-3. Alutiiq has presented no evidence, beyond its mere speculation, that Doyon's and Santa Fe's reliance on CIS for various technical aspects of their proposals must have also resulted in the offerors exchanging price information, and we will not assume that this was the case.[13] Ross Aviation, Inc., supra, at 3. Similarly, with respect to Chenega SPS and TW, it is important to note that there are two different Chenegas involved here--Chenega SPS, which was an offeror, and Chenega IS, which TW proposed as its subcontractor--that are "sister subsidiaries" of the same parent corporation, Chenega Corporation. The fact that two offerors, or an offeror and a second offeror's subcontractor, have common corporate ownership is not by itself sufficient to establish that the offerors failed to price their proposals independently, and where, as here, a protester presents no other evidence, beyond mere speculation, showing that competitors did not arrive at their prices independently, we will not assume otherwise. See McCombs Fleet Servs., supra, at 4.

Other Evaluation Issues

Alutiiq also protests that the Army improperly evaluated its proposal under the small business participation factor. Specifically, the protester contends that the agency's evaluation noted that Alutiiq had proposed to meet the small business participation goals set forth in the RFP. Alutiiq contends that since its proposal was of high quality and met all requirements, it should have received a rating of very good rather than satisfactory under this factor. Protest, Oct. 31, 2006, at 7. We find that the protester has failed to demonstrate any prejudice here.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the

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[13] While it is true that CIS knew the prices at which it had offered to perform work for Doyon and Santa Fe (and that in each instance CIS's price would become a significant part of that offeror's cost), there is no evidence that CIS knew that Doyon or Santa Fe would utilize that precise price, without any mark-up or mark-down, in their proposals. There is also no evidence that CIS knew of Doyon's or Santa Fe's prices, or that Doyon or Santa Fe communicated with the other regarding the prices that each offeror intended to propose.

agency's actions, it would have had a substantial chance of receiving the award. Parmatic Filter Corp., B-285288.3, B-285288.4, Mar. 30, 2001, 2001 CPD ¶ 71 at 11; see also Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Here, even if Alutiiq's proposal were assigned a higher rating of very good under the small business participation factor, this rating, when combined with the ratings it received on the remaining nonprice evaluation factors, would not have changed the overall very good rating assigned Alutiiq's technical proposal. Under these circumstances, we conclude that Alutiiq was not prejudiced, even assuming that the agency's evaluation of the protester's proposal under the small business participation factor was flawed.

Lastly, Alutiiq protests the agency's evaluation of Doyon's proposal with regard to the past performance and experience factors. The protester contends that Doyon's proposal indicates a lack of relevant prime contractor security guard experience at military installations. Alutiiq also contends that Doyon's primary subcontractor, CIS, has had significant past performance problems on its prior security guard service contracts. By failing to take this information into account, the protester argues, the agency's rating of Doyon's proposal as very good for both past performance and experience was unreasonable. Protest, Oct. 31, 2006, at 5-6. We find that Alutiiq is not an interested party to protest the evaluation of, and award to, Doyon because it would not be next in line for award of the Pacific Coast region contract if the award to Doyon were set aside.

In order for a protest to be considered by our Office, a protester must be an interested party, which means that it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. § 21.0(a); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is an interested party to challenge the evaluation of the awardee's proposal where there is a reasonable possibility that the protester's proposal would be in line for award if the protest were sustained. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 9; Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 9.

The record here clearly reflects that the SSA considered the proposals of Doyon, Chenega SPS, TW, and Alutiiq to be technically equal (i.e., no proposal contained any meaningful advantage that was not otherwise balanced by, encompassed in, or provided for in the other offerors' proposals).[14] AR, Tab 14, Source Selection Decision, at 18-23. Moreover, as set forth above, the proposals of Chenega SPS and TW were both lower-priced than that of Alutiiq for the Pacific Coast region. Where, as here, there are intervening offerors that would be in line for award ahead of Alutiiq if its challenge to the award to Doyon were sustained, we consider Alutiiq's

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[14] The SSA also determined that the proposal of the lowest-priced, lower-technically-rated offeror, did not represent the best value to the government. AR, Tab 14, Source Selection Decision, at 23-24.

interest to be too remote to qualify it as in interested party. See Ridoc Enter., Inc., supra.

The protest is denied.

Gary L. Kepplinger
General Counsel