



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DECISION FOR PUBLIC RELEASE

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Matter of: SRS Technologies

File: B-270341.2

Date: March 1, 1996

Alan M. Grayson, for the protester.

J. Scott Merrell, for Research Triangle Institute, an intervenor.

Terrence W. Carlson, Esq., Department of Transportation, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of proposals for technical support services is denied where the evaluation was reasonable and consistent with the solicitation's stated evaluation scheme.
2. Agency conducted meaningful discussions where it reasonably led the protester into area of its proposal that required amplification or clarification.
3. Protest that contracting agency should have disqualified the awardee because of organizational conflicts of interest is denied where the awardee certified that it did not have any conflicts of interest and provided a plan for reporting and mitigating any potential conflicts, and the contracting officer reasonably determined that the awardee's mitigation plan was a good one and that the awardee had met its conflict of interest obligations under past contracts with the agency.

DECISION

SRS Technologies protests the award of a technical support services contract to Research Triangle Institute (RTI) by the Department of Transportation (DOT) pursuant to request for proposals (RFP) No. DTOS59-95-R-00006. The protester alleges that the agency did not evaluate technical proposals and conduct a cost/technical tradeoff in accord with the RFP's evaluation scheme, did not hold meaningful discussions, and improperly accepted RTI's offer even though the firm has organizational conflicts of interest. We deny the protest.¹

¹The protester raised a host of arguments in support of these allegations. We have considered all of SRS's arguments and find no basis for sustaining the protest. We will discuss only the most noteworthy arguments in this decision.

Issued on March 31, 1995, the RFP solicited proposals for providing technical expertise to DOT's Office of Commercial Space Transportation (OCST) in support of its regulatory safety responsibilities in each of four distinct work areas as follows: Area 1 - Enforcement, Investigations, and Inspections; Area 2 - Commercial Launch Sites and Site Operations; Area 3 - Orbital and Reentry Issues and Strategy; Area 4 - Launch Safety Operations Evaluation. Offerors were allowed to submit proposals for any one or all of the work areas. The RFP stated that contracts would be awarded to those offerors whose proposals represented the best value to the government, cost and other factors considered. The RFP envisioned award of one or more cost-plus-award-fee contracts; each contract would be for a 1-year base period and would include options for 4 additional years.²

Eleven offers were received by the May 19 closing date. After evaluation of initial proposals, five were included in the competitive range. Discussions were held with all competitive range offerors, and best and final offers (BAFO) were received and evaluated. After reviewing the technical evaluations and considering the evaluated costs of the BAFOs, the contracting officer determined that RTI's highest technically rated proposal would best meet the government's needs even though the proposal was evaluated as highest in total cost. Therefore, on September 29, the contract was awarded to RTI. The agency debriefed SRS on October 26, and SRS filed this protest shortly thereafter.

The protester contends that the evaluation of proposals was unreasonable. According to the protester, the evaluation record contains several statements praising SRS's initial proposal regarding SRS's [DELETED]. SRS contends that the evaluators completely reversed themselves and criticized SRS's BAFO as it related to [DELETED]. Conversely, SRS states that the evaluators considered a key weakness of RTI's initial proposal to be related to RTI's [DELETED]. According to SRS, the evaluators inexplicably reversed themselves and praised RTI's BAFO for demonstrating RTI's complete [DELETED]. SRS contends that the contracting officer's cost/technical tradeoff analysis necessarily was flawed because it was based upon the unreasonable technical evaluation.

Our Office will question an agency's evaluation of proposals only if the evaluation lacks a reasonable basis or is inconsistent with the stated evaluation criteria for award. See DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95. A protester's mere disagreement with the agency over its technical evaluation does not establish that the evaluation was unreasonable. Id. Here, our review of the evaluation record (including each evaluator's handwritten notes, consensus reports, and the

²SRS's protest concerns only the award of a contract to RTI for Area 2 - Commercial Launch Sites and Site Operations. Therefore, unless otherwise noted, we will discuss only those procurement actions associated with award of the Area 2 contract in the remainder of this decision.

source selection document) reveals no basis to conclude that the evaluation was unreasonable or inconsistent with the RFP's criteria.

The RFP stated that proposals would be evaluated on three technical factors (technical approach, past performance, and personnel experience) and cost. The RFP indicated that technical approach was the most important factor and that past performance and personnel experience were next in importance and were equal in weight. The RFP stated that cost was also important but would be given less weight than the three technical factors. The evaluation record shows that each evaluator gave a qualitative rating (complete with narrative discussion) to SRS's and RTI's proposals on each of the technical evaluation factors, that the evaluation team then arrived at a consensus rating (complete with narrative discussion) on each evaluation factor, and that the process was repeated for initial proposals and BAFOs.

The protester has taken out of context excerpts from individual evaluators' narrative comments and from the evaluation team's consensus reports in an effort to show that the BAFO evaluations were radically inconsistent with the initial evaluations. However, the excerpts presented by SRS do not accurately portray the overall evaluation of either SRS's or RTI's proposal; our review finds that the evaluations of initial offers and BAFOs were consistent.

SRS points out several instances in which the evaluators listed as strengths portions of its initial proposal concerning [DELETED], but argues that, in "a complete reversal," the evaluation team criticized SRS's BAFO regarding [DELETED]. The record shows that the evaluators did, in fact, praise SRS's initial proposal on some [DELETED] areas. For example, the initial consensus report stated that SRS's proposal "[DELETED]." This statement and others cited by SRS were all made in the evaluation of the technical approach factor.³ In evaluating SRS's initial proposal as "[DELETED]" on technical approach, the evaluators praised, among other things, SRS's understanding of [DELETED].

Contrary to SRS's assertion, the BAFO evaluation did not represent a reversal of the earlier praise of SRS's initial technical approach. In fact, the record shows that in evaluating SRS's BAFO, the evaluation team praised several aspects of SRS's technical approach and rated it as [DELETED] on that factor. The negative statement cited by SRS from the BAFO consensus report was made in connection with the evaluation [DELETED] of SRS's [DELETED]. The evaluation team stated:

³In order to evaluate technical approach, the RFP required offerors to prepare an essay stating the offeror's view and understanding of the issues/problems to be faced by OCST and the actions necessary for OCST to carry out its regulatory responsibilities.

"[DELETED]."

This statement is entirely consistent with the evaluation of SRS's initial proposal wherein the evaluators criticized the proposal as not demonstrating how SRS's [DELETED]. In sum, the evaluation record shows that the evaluators were satisfied with SRS's technical approach but, [DELETED] which resulted in ratings of [DELETED] on past performance and experience.

Likewise, the evaluation record does not support the protester's assertion that the evaluation of RTI's BAFO was inconsistent with the evaluation of its initial proposal. Again, SRS has selected excerpts from the evaluations that do not portray an accurate picture of the full evaluation. SRS cites two negative comments made by individual evaluators when evaluating RTI on past performance. The truth is that the cited criticisms were included with a host of positive comments made by evaluators concerning RTI's relevant past performance on a number of contracts, some of which were with OCST. The positive and negative comments were considered by the entire team and a consensus rating of "[DELETED]" was given for past performance in both the initial and BAFO evaluations. The positive statement cited by SRS--[DELETED]--as "another inexplicable reversal" was neither inexplicable nor a reversal of the earlier evaluation. The statement was made in connection with the evaluation of RTI's technical approach and was consistent with the initial evaluation as evidenced by the fact that RTI received [DELETED] ratings for both its initial proposal and BAFO on the technical approach factor.

SRS has not shown and the record does not support a finding that the technical evaluations were unreasonable or otherwise improper.⁴ Therefore, the protester's argument that the cost/technical tradeoff analysis was flawed because it was based upon unreasonable technical evaluations provides no basis for overturning the agency's selection of RTI's higher priced, more technically qualified proposal.

The protester alleges that the agency's discussions with it were not meaningful because the evaluators downgraded its proposal based upon their concern about

⁴SRS also contends that the evaluation was unreasonable because its proposal for Area 2 (commercial launch sites and site operations) was downgraded for its approach to [DELETED] but its proposal for Area 4 (launch safety operations evaluation) was not downgraded for using a similar approach. However, the record shows that the evaluators actually complimented this facet of SRS's proposal, stating: "[DELETED]." Moreover, each of the work areas requires support services for different aspects of OCST's commercial launch program and was evaluated by a different evaluation team, and there is nothing unusual or improper in different evaluators having different perceptions of the merit of a proposed approach, especially where, as here, the work involves different aspects of the program. See, for example, Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566.

SRS's [DELETED], but the agency did not advise SRS of that perceived deficiency in its initial proposal. Therefore, SRS contends, it unfairly was not given an opportunity to revise its proposal or otherwise to allay the evaluators' concern.

For discussions to be meaningful, an agency must advise an offeror of the deficiencies, weaknesses or excesses in its proposal that require amplification or clarification to have a reasonable chance at receiving award. See Gutierrez-Palmenberg, Inc., B-255797.3 et al., Aug. 11, 1994, 94-2 CPD ¶ 158; See DAE Corp., Ltd., supra. Agencies, however, are not required to conduct all-encompassing discussions or discuss every element of a proposal receiving less than the maximum rating. Id. They need only lead an offeror generally into the areas of its proposal that require amplification. Gutierrez-Palmenberg, Inc., supra.

The evaluators rated SRS's initial proposal "[DELETED]" on technical approach, the most important evaluation factor. Contrary to SRS's assertion, the record does not show that the proposal was downgraded on technical approach because of SRS's approach to [DELETED]. As noted earlier, the evaluators actually stated that this facet of the proposal was [DELETED]. The evaluation panel also stated, among other things, that SRS had demonstrated [DELETED]. Because SRS's technical approach was considered acceptable, the agency properly decided that there was no need to conduct discussions with SRS concerning its technical approach essay. See Johnson Controls World Servs. Inc., B-257431; B-257431.5, Oct. 5, 1994, 94-2 CPD ¶ 222.

The evaluators rated SRS's initial proposal "[DELETED]" on the past performance and personnel experience factors. In evaluating past performance and personnel experience, the evaluators expressed concern that SRS's corporate and personnel experience were [DELETED]. One evaluator summarized the deficiency as follows: "[DELETED]." In this respect, the RFP stated that offers should demonstrate how past performance and personnel experience were related to performing the required services, and the statement of work clearly emphasized that required services would be [DELETED]. The RFP notified offerors that they should explain how their corporate and employee experience would help them perform the required services, [DELETED]."

In our opinion, the agency's discussions with SRS were meaningful. After determining that SRS's initial proposal described acceptable corporate and employee operating experience but [DELETED] the agency provided SRS with two relevant written discussion items that were to form the basis for oral discussions and revisions/clarifications to SRS's BAFO. The first discussion item was:

"[DELETED]"

The second was:

"[DELETED]"

These written discussion items should reasonably have led SRS into the very areas of its proposal that needed amplification or clarification (i.e., past performance and personnel experience), especially in view of the RFP's statement concerning the [DELETED]. It should have been clear to SRS that the agency was concerned about the relevance of SRS's [DELETED]. Having led SRS into the areas of concern, DOT did not have to tell SRS any more specifically what was the matter with its proposal. See DAE Corp., Ltd., supra.

The protester also contends that RTI's offer failed to disclose that RTI and its affiliates, employees, consultants, and subcontractors have contracts or relationships with firms that have contracts relating to space transportation with DOT or other government agencies. SRS contends that under the terms of the RFP, RTI was required to, but did not, disclose its organizational conflicts of interest, and therefore DOT should have determined that RTI was ineligible for award.

The Federal Acquisition Regulation (FAR) contains general rules that prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest. See FAR subpart 9.5. The two underlying principles are preventing the existence of conflicting roles that might bias a contractor's judgment, and preventing an unfair competitive advantage. FAR § 9.505. Among other things, the FAR provides that contracts involving technical evaluations of other contractors' offers or products, or advisory and assistance services, generally should not be awarded to a contractor that would evaluate, or advise the government concerning, its own products or activities or those of competitors, without appropriate safeguards to ensure objectivity and protect the government's interests. FAR § 9.505-3.

The RFP required offerors to include in their proposals a statement certifying that no conflicts exist or disclosing any past, present, or planned organizational conflicts of interest; if a conflict existed, the offeror was to describe how it would perform the contract in an impartial and objective manner. The RFP required the contracting officer to review the statement and, if a conflict was found to exist, the contracting officer could either disqualify the offeror or award the contract but include appropriate provisions to mitigate the conflict.

RTI's proposal included a conflict of interest statement certifying that: (1) RTI did not have any employees, consultants, or subcontractors proposed for work under this contract who had any financial interests involving organizations regulated by DOT; and (2) RTI and its two proposed subcontractors had potential conflicts relating to possible launch site applications that might arise in the future. RTI proposed a plan whereby: [DELETED].

The responsibility for determining whether potential conflicts exist with regard to a particular offeror or whether there is little or no likelihood that such conflicts exist, and to what extent the firm should be excluded from the competition, rests with the contracting officer. See Meridian Corp., B-246330.4, Sept. 7, 1993, 93-2 CPD ¶ 129. Our Office will examine the contracting officer's judgment to see if it is reasonable. See American Sys. Corp., B-239190, Aug. 6, 1990, 90-2 CPD ¶ 109.

Here, the contracting officer examined RTI's approach to handling any conflicts of interest and determined that RTI could [DELETED] where necessary in order to perform the required technical support services. Based in part upon the fact that RTI [DELETED] the contracting officer decided that RTI had proposed a good plan for mitigating any conflicts of interest that might arise during the performance of the contract. We see nothing unreasonable in the contracting officer's decisions in those regards. SRS's disagreement with the agency provides no basis for overturning the agency's judgments. Id.

The protest is denied.

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