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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Cherokee Information Services

File: B-287270

Date: April 12, 2001

Michael I. Hodges for the protester.

John D. Inazu, Esq., Department of the Air Force, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency did not conduct unequal discussions where agency held technical discussions with awardee, whose technical proposal was initially evaluated as containing a number of weaknesses, while conducting no technical discussions with protester, whose initial proposal did not contain any weaknesses or deficiencies.
 2. Agency was not obligated to advise protester during discussions that its price was higher than awardee's, where the agency considered protester's price reasonable given its technical approach.
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DECISION

Cherokee Information Services (CIS) protests the award of a contract to Business Plus Corporation (BPC) under request for proposals (RFP) No. F44650-01-R-0002, issued by the Department of the Air Force for operating a delivery control center in support of the Air Operations Squadron at Langley Air Force Base.¹ CIS contends that the agency conducted unequal technical discussions, and improperly failed to discuss CIS's proposed price.

¹ The mission of the control center is to provide the safe and timely worldwide delivery of approximately 200 to 300 transoceanic monthly sorties for the Department of Defense and foreign military aircraft. RFP Statement of Work ¶ 1.1.1 at 3. The center serves as the command and control function for continuous monitoring of all aircraft deliveries.

We deny the protest.

The RFP, issued on August 30, 2000, was restricted to firms certified under the Small Business Administration's section 8(a) set-aside program, and contemplated the award of a fixed-price contract for the required support services for a 6-month phase-in period, a basic year, and up to four 1-year option periods.² The RFP listed past performance, mission capability, and price as evaluation factors in descending order of importance, with past performance and mission capability considered primary and of equal importance.³ The RFP explained that in assessing past performance, the agency would rate proposals using a confidence rating scale ranging from unsatisfactory/no confidence to exceptional/high confidence, or neutral/unknown. Id. § 9. The RFP also stated that the subfactors within the mission capability area would be evaluated by applying the following color/adjectival ratings: blue (exceptional), green (acceptable), yellow (marginal), or red (unacceptable). Id. Price was to be evaluated for reasonableness relative to the government's independent estimate, the offeror's technical approach, and the other offerors' prices. Id. Award was to be made on the basis of the proposal deemed to represent the best value to the government.

Following the initial evaluation, the Air Force retained CIS's, BPC's, and a third firm's (Offeror A) proposal within the competitive range. The agency then initiated discussions by submitting evaluation notices (EN) identifying deficiencies, weaknesses, or areas of the proposals requiring clarification to BPC and Offeror A. On December 11, the contracting officer (CO) informed CIS that discussions were being held, and that although its proposal was included within the competitive range, there were no clarifications required or deficiencies in its proposal that needed to be addressed. Agency Report (AR) exh. 8. By letter dated January 10, 2001, the agency requested final proposal revisions (FPR), and reevaluated proposals based on the

² The RFP stated that the procurement would be conducted pursuant to a cost comparison performed under Office of Management and Budget Circular No. A-76. The agency states, however, that this acquisition was a direct conversion to civilian personnel of functions previously performed exclusively by military personnel in accordance with Air Force Instruction 38-203, Aug. 1, 2000, Chap. 14, which provides policies and procedures for direct conversions without conducting a formal A-76 cost comparison. These procedures may found at <<http://afpubs.hq.af.mil>>.

³ Within the past performance factor, the RFP listed performance, quality of service, management effectiveness, and cost control as subfactors. Within the mission capability factor, the RFP listed program and workload management, contractor personnel, quality control plan, property management plan, and transition as subfactors.

FPRs, with the following adjectival and color ratings for the three firms whose proposals were retained within the competitive range:

	MISSION CAPABILITY						Price (\$mil)
	Past Perf.	Work Mmgt.	Cont. Pers.	Qual. Control	Prop. Mmgt.	Trans.	
CIS	E/High	Blue	Blue	Blue	Green	Green	\$4.981
BPC	E/High	Blue	Green	Blue	Green	Green	4.35
Offeror A	VG/Sig	Green	Green	Green	Green	Green	5.345

AR exh. 18, Proposal Evaluation Report (PER), at 28.

Based on these results, the CO, who was the source selection authority (SSA) for this acquisition, found that CIS had submitted the highest rated technical proposal. *Id.* at 29. The SSA noted that within the mission capability factor, CIS's blue (exceptional) rating under the program workload management subfactor reflected the firm's "outstanding understanding of the mission" *Id.* The SSA further noted that CIS's rating under the contractor personnel subfactor was the only blue (exceptional) rating assigned, reflecting a highly qualified team, and that CIS's proposal also earned the highest possible rating under the quality control plan subfactor. As for price, the record shows that the agency reviewed all offerors' proposed prices for reasonableness and accuracy, and found that the variation in total prices was attributable to such factors as different number of personnel proposed, hourly rates, and other direct costs and overhead. *Id.* The evaluators concluded that all three offerors' prices, including CIS's, were reasonable given their respective technical approaches.

The SSA reviewed the technical and price evaluations and concluded that the strengths identified in CIS's proposal, while impressive, did not justify paying CIS's price premium, considering BPC's lower-priced, highly-rated proposal. Specifically, the SSA noted that, by comparison, BPC's price was the lowest of the three firms remaining in the competitive range, and that the savings over the life of the contract outweighed any benefits that could be gained from CIS's slightly higher-rated proposal. Accordingly, the SSA determined that BPC's proposal was the best value to the government, and awarded the contract to that firm. This protest followed a debriefing by the agency.

CIS contends that the agency conducted unequal discussions because, although the agency held technical discussions with BPC and Offeror A, the Air Force failed to point out any weaknesses, deficiencies, or excesses in CIS's proposal. In addition,

the protester argues that the agency did not engage in meaningful discussions because it failed to discuss CIS's price.⁴

The Federal Acquisition Regulation (FAR) requires that COs discuss with each offeror being considered for award "significant weaknesses, deficiencies, and other aspects of its proposal . . . that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award." FAR § 15.306(d)(3). While the precise scope and extent of discussions are a matter of CO judgment, the agency should tailor its discussions to each offeror's proposal. FAR § 15.306(d)(1); The Pragma Corp., B-255236 et al., Feb. 18, 1994, 94-1 CPD ¶ 124 at 9.

The Air Force satisfied its obligation here. The record shows that the agency conducted technical discussions with BPC and Offeror A because those firms' initial technical proposals contained a number of evaluated weaknesses or deficiencies. CIS's proposal, on the other hand, did not have any significant weaknesses or deficiencies, and therefore the agency properly found nothing in CIS's technical proposal that needed to be clarified or revised through discussions. Further, with respect to the only two evaluation subfactors within the mission capability area where CIS's proposal was rated green (acceptable)--property management plan and transition plan--the record shows that the evaluators found that CIS's proposal demonstrated the firm's ability to successfully manage government property, and that its overall transition plan met the government's requirements. AR exh. 18, PER at 11. In view of the evaluators' positive assessment of CIS's ability to manage government property and its transition plan, we agree with the Air Force that

⁴ CIS also complains that the agency's letter requesting FPRs was confusing and allowed insufficient time for CIS to prepare and submit its FPR. As with an offeror who participates in a procurement and then waits until it is not selected for award to protest alleged improprieties apparent during the competition, CIS may not participate in an allegedly flawed competitive process, and then wait to complain about the process only after the firm was not selected for award. See Precision Signal, Inc., B-250852.2, Apr. 12, 1993, 93-1 CPD ¶ 309 at 3 n.1 (objection that an RFP's evaluation factor was "vague and nonspecific as to what was required," raised after award, is untimely); The Fletcher Constr. Co., Ltd. B-248977, Oct. 15, 1992, 92-2 CPD ¶ 246 at 6-7 (protester's allegation that its cost savings ideas were improperly incorporated into solicitation dismissed as untimely because protest concerned an alleged impropriety incorporated into the RFP, which should have been raised prior to the next closing date for receipt of proposals); Davis Constructors, Inc., B-232954, B-232955, Jan. 12, 1989, 89-1 CPD ¶ 40 at 3 (allegation that RFP contained defects and ambiguities and provided insufficient time to prepare and submit proposals untimely where not raised prior to closing). CIS's objection, therefore, that the agency's letter requesting FPRs was confusing or allowed insufficient time for the firm's response, raised after award, is untimely and will not be considered further. 4 C.F.R. § 21.2(a)(1) (2000).

discussions concerning the two green (acceptable) ratings were not required. See ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 16; MCR Fed., Inc., B-280969, Dec. 14, 1998, 99-1 CPD ¶ 8 at 11, citing DAE Corp., B-259866, B-259866.2, May 1995, 95-2 CPD ¶ 12 at 4-5 (an agency is not required to discuss every aspect of an offeror's acceptable proposal that receives less than the maximum score).

The protester also argues that the agency improperly failed to discuss its price. Specifically, CIS contends that even though the CO was aware that the main factor driving its price was CIS's proposed staffing levels, he did not engage in meaningful discussions with CIS so as to allow the firm to adjust its staffing levels, and presumably lower its price.

Under FAR § 15.306(e)(3), "the [CO] may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion." This language clearly gives the CO discretion to inform the offeror that its cost/price is too high, but does not require that the CO do so, especially where, as here, the agency does not consider the price unreasonable or a significant weakness or deficiency. See National Projects, Inc., B-283887, Jan. 19, 2000, 2000 CPD ¶ 16 at 5; KBM Group, Inc., B-281919, B-281919.2, May 3, 1999, 99-1 CPD ¶ 118 at 8-9 (agency did not mislead protester during discussions, even though award was ultimately made based on price and agency did not inform protester that its price was higher than awardee's price, where agency did not believe that protester's price was too high for the approach taken). Here, the agency reviewed proposed prices and determined that CIS's price was competitive and not unrealistically high. Accordingly, the agency had no duty to advise CIS that its price was high compared to that of the awardee's.

The protest is denied.

Anthony H. Gamboa
General Counsel