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Comptroller General
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Decision

Matter of: Instrument Control Service, Inc.

File: B-285776

Date: September 6, 2000

Robert A. Emmanuel, Esq., Emmanuel, Sheppard & Condon, for the protester.
Benjamin N. Thompson, Esq., and Jennifer M. Miller, Esq., Wyrick Robbins Yates & Ponton, for LB&B Associates Inc., the intervenor.
Louise E. Hansen, Esq., Defense Logistics Agency, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where the protester, while objecting to agency's conclusion that its proposal contained two minor weaknesses, fails to show that it was prejudiced, even assuming its objections are correct.
2. Protest that the awardee plagiarized the protester's proposal submitted on an earlier procurement concerns a dispute between private parties over which the General Accounting Office has no jurisdiction.
3. Protest that awardee's low proposed fixed price was unrealistic is denied where the agency evaluated the realism of the awardee's price, ascertaining the reasons for the significant differences between the awardee's and protester's prices, and the protester failed to show that any part of the agency's price realism analysis was erroneous or unreasonable.

DECISION

Instrument Control Service, Inc. (ICS) protests the award of a contract to LB&B Associates Inc. under request for proposals (RFP) No. MDA112-00-R-0008, issued by the Television-Audio Support Activity, Department of Defense (DOD), for operation and maintenance of audio-visual, broadcast, photographic and support equipment

and systems at the Defense Information School.¹ ICS contends that the agency misevaluated its and LB&B's proposals.

We deny the protest.

The RFP, issued under the procedures set forth in Federal Acquisition Regulation (FAR) part 12 for the acquisition of commercial items, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base year with four 1-year options. The RFP provided performance-based specifications for performing the contract work requirements.

Offerors were informed that award would be made on a best-value basis and that the technical evaluation factors were together more important than price. The technical evaluation factors were stated to be (1) technical approach; (2) past performance; (3) management capability; and (4) personnel qualifications.² Technical approach was stated to be equal in importance to the remaining technical evaluation factors together, and past performance was stated to be equal in importance to the remaining two factors. The RFP provided that price would be evaluated for reasonableness and realism. Proposal preparation instructions detailed the information that offerors were to provide for each of the evaluation factors. Offerors were also informed that the agency intended to make award without conducting discussions.

The agency received five proposals, including ICS's (the incumbent contractor) and LB&B's, which were evaluated by the agency's two-person technical evaluation team (TET). The technical evaluators individually scored each proposal, discussed their ratings, and adopted a consensus judgment of each proposal's rating.³ Contracting Officer's Statement at 7; Agency Report, Tab 21, Proposal Analysis Report, at 3. LB&B's, ICS's, and the highest-rated offeror's proposals were evaluated as follows:

¹ The Defense Information School provides training for DOD and other federal agency personnel in public affairs and visual information career fields, such as journalism, broadcasting, combat documentation, and photography. RFP, exh. A, Performance Work Statement (PWS), at 1.

² Subfactors and their relative weights were identified for each of the technical evaluation factors. Under the personnel qualifications factor, the following subfactors were stated: position descriptions, resumes, and labor mix by shift.

³ The consensus evaluation resulted in an overall upward adjustment for ICS in the ratings of one of the evaluators. Compare Agency Report, Tab 15C, Individual Evaluator Scoring Sheets for ICS, with Tab 16C, Consensus Narrative Summary.

Technical Factor	Total points⁴	Offeror A	LB&B	ICS
Technical approach	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Past performance	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Management capability	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Personnel qualifications	[DELETED]	[DELETED]	[DELETED]	[DELETED]
TOTAL	1,000	877	853	854
PRICE	\$6 million⁵ (IGE)	\$6.54 million	\$3.85 million	\$6.02 million

ICS's and LB&B's proposals were the second and third highest-rated. They were determined to be strong proposals, presenting low technical and performance risk, and demonstrating a complete understanding of the contract requirements, sound technical background and approach to performing the requirements, and good past performance and experience. Agency Report, Tab 21, Proposal Analysis Report, at 9. The two firms' technical proposals were found to present many "value added features" and only a few minor weaknesses. Agency Report, Tab 16C, TET Consensus Evaluation Scoring, at 1-3; Tab 21, Proposal Analysis Report, at 6-7, 9-10. With respect to ICS's proposal, the consensus evaluation identified only two weaknesses: "[DELETED]" and "[DELETED]." Agency Report, Tab 16C, Consensus Narrative Summary, at 3. The agency's contract team (CT) evaluated the offerors' proposed pricing for reasonableness and realism, and determined both firms' prices to be reasonable and realistic. Agency Report, Tab 20, Price Analysis Report, at 4.

The TET's and CT's findings were presented to the source selection authority (SSA) with the recommendation that LB&B receive the award because it offered the best value to the government. Agency Report, Tab 21, Proposal Analysis Report, at 10. The SSA adopted this recommendation and selected LB&B's proposal for award. Agency Report, Tab 22, Source Selection Decision. After receiving a debriefing, ICS protested to our Office.

ICS objects to the two weaknesses identified in its proposal asserting that its proposal contained adequate information addressing these areas.⁶ ICS also contends

⁴ The RFP did not disclose the number of points available for the technical evaluation factors and subfactors.

⁵ The independent government estimate (IGE) was calculated [DELETED]. Agency Report, Tab 20, Price Analysis Report, at 1.

⁶ In its comments, the protester also challenges a number of statements made by one of the evaluators in his individual evaluation. Protester Comments at 4-7. The record shows that these statements were not carried forward from the individual evaluator's notes to the consensus evaluation scores and that ICS's consensus evaluation scores in these areas are higher than the scores originally awarded by the evaluator. Compare Agency Report, Tab 15C, Individual Evaluator Scoring Sheets for ICS, with Tab 16C, Consensus Narrative Summary. Given that these statements
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that, in any event, LB&B's proposal does not provide any more information than did ICS in its proposal concerning LB&B's proposed [DELETED], but that these areas were not identified as weaknesses in LB&B's proposal.⁷

Even assuming there is any merit to these objections, ICS has failed to make any showing of competitive prejudice. Competitive prejudice is an essential element of every viable protest. Lithos Restoration Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5. Where the record does not demonstrate that, but for the agency's actions, the protester would have had a reasonable chance of receiving the award, our Office will not sustain a protest, even if a deficiency in the procurement is found. 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).

We find no basis to conclude that the protester would have had a reasonable chance of receiving award, even if its contentions concerning these weaknesses are correct. The two weaknesses were identified in the evaluation of ICS's proposal under the personnel qualifications factor, which was stated to be of significantly less importance than the technical approach and past performance factors. ICS's proposal received [DELETED] of [DELETED] available points under the personnel qualifications factor, which consisted of three subfactors, and the record does not suggest that ICS would have received any substantial additional credit if these minor weaknesses had not been identified in its proposal. In any event, even were we to credit ICS's proposal for these weaknesses that arose under two of this factor's subfactors by increasing ICS's point score to the maximum number of available points available for those subfactors, ICS's total score would only increase by 20 points to a total of 874 points. This point total is only marginally higher than that of LB&B (approximately 2.5 percent higher), in comparison to LB&B's more than \$2 million price advantage (a 56-percent difference in price). Given the agency's assessment that the highest-rated proposal with a point score of 877 points did not offer significant technical advantage to offset LB&B's substantial price advantage (\$3.85 million versus \$6.5 million), we find it highly improbable that ICS's proposal could reasonably be selected for award if its point score were raised to 874 points;

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were not part of the consensus evaluation upon which the SSA relied in making his selection decision, ICS's objections to the statements provide us with no basis to question the SSA's award judgment.

⁷ ICS initially expressed dismay in its protest that it, as the incumbent, had not received a higher past performance score than had LB&B, but did not address the agency's past performance evaluation in its comments. We therefore conclude that ICS abandoned this protest allegation. In any event, the record shows that the agency reasonably evaluated LB&B's and ICS's respective past performance consistent with the RFP evaluation scheme.

thus, we cannot find any reasonable possibility of prejudice that would justify disturbing the award, even assuming these protest contentions were meritorious.

ICS also complains that LB&B plagiarized ICS's technical proposal submitted in the competition for the award of the prior contract in 1995. LB&B denies that it knowingly copied any of ICS's prior proposal, or ever received or saw a copy of ICS's proposal; the awardee states, however, that a consultant, [DELETED], assisted LB&B in the preparation of its proposal. LB&B Response to ICS's Comments at 2-3. Given the lack of evidence of any wrongful conduct by the agency (in this regard, the protester does not point to any reason the evaluators would recognize that LB&B's proposal was similar to that submitted by ICS in 1995), this matter is a dispute between private parties, over which our Office has no jurisdiction. See P-III Assocs., B-213856, B-213856.2, July 31, 1984, 84-2 CPD ¶ 136 at 7-8.

ICS finally complains that LB&B's low proposed price cannot be realistic. The agency performed a price realism evaluation and determined that LB&B's proposed price, although significantly lower than that of ICS, was realistic. Specifically, the CT noted that the significant difference between LB&B's, ICS's and the highest-rated offeror's pricing primarily reflected LB&B's [DELETED]. LB&B's non-exempt labor rates were determined to be within the applicable Department of Labor wage determination and included all applicable benefits and required employment taxes. LB&B also proposed [DELETED]. Specifically, LB&B proposed [DELETED]. ICS proposed [DELETED]. Contracting Officer's Statement at 17. The CT concluded that LB&B's price "adequately supported all labor and other direct costs required for successful contract performance." Agency Report, Tab 20, Price Analysis Report, at 3. Because ICS does not assert that any part of the agency's price realism analysis is erroneous or unreasonable, and the evaluation otherwise appears reasonable in this regard, we have no basis to conclude that the agency's judgment is unreasonable.

The protest is denied.

Robert P. Murphy
General Counsel