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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EG&G Washington Analytical Services
Center, Inc.

File: B-242149

Date: April 4, 1991

Earl N. Fray and David Lynch for the protester.
Captain F.T. Jaffin and Clara M. Pesquera, Esq., Department of
the Navy, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protest that contracting agency utilized improper price auction techniques is denied where it is based solely on the circumstance of the awardee's reduction of its cost in its best and final offer and there is no corroborating evidence that supports the protester's speculative claim.
2. Requirement for meaningful discussions is met where the contracting agency provided the protester with questions, which reflected the agency's major concerns with the protester's highly rated technically acceptable proposal and provided the protester with the opportunity to revise its proposal; the agency was not required to identify every single weakness contained in the protester's proposal.
3. Agency's evaluation of the protester's proposal was reasonable and consistent with the evaluation criteria; there is no evidence in the record to support the contention that the agency improperly evaluated the protester's proposal based upon information known only to the incumbent.

DECISION

EG&G Washington Analytical Services Center, Inc. protests the award of a contract to TRW Systems Division under request for proposals (RFP) No. N00039-89-R-0276, issued by the Department of the Navy, Space and Naval Warfare Systems Command (SPAWAR), for systems engineering and integration (SE&I) services. EG&G contends that award to TRW was improper because (1) SPAWAR allegedly employed improper price auctioning techniques to the benefit of TRW; (2) SPAWAR

allegedly held meaningful discussions with TRW, but not with EG&G; and (3) SPAWAR wrongfully downgraded EG&G's proposal by considering information not related to the RFP criteria and available only to TRW, the incumbent contractor.

We deny the protest.

The RFP was issued on August 4, 1989, to obtain, on a cost-plus-award-fee basis, SE&I services for the Undersea Warfare Program (UWP) Directorate.^{1/} The SE&I services included providing relevant documentation, engineering specifications, program plans, analytical studies, trade-off studies and recommendations. The RFP advised that award would be made to the responsible offeror whose proposal was determined to be most advantageous to the government, cost and other factors considered, based upon the evaluation of proposals against the RFP's evaluation criteria. Technical/management factors were said to be significantly more important than cost. The technical/management evaluation criteria were listed in the RFP in descending order of importance as follows: (1) technical approach; (2) personnel; (3) management approach; (4) corporate experience; and (5) facilities. The first two technical factors were said to be significantly more important than the other three.

On September 25, 1989, SPAWAR received four proposals in response to the RFP. A technical evaluation board (TEB) evaluated proposals against the RFP's evaluation criteria using a scoring procedure based upon a 100-point scale. The TEB determined one proposal was technically unacceptable and the remaining three, including TRW's and EG&G's, were technically acceptable. EG&G's proposal received an initial total weighted score of 82.36, which reflected a technical score of 44.28 and a cost score of 38.08. TRW's proposal received an initial total score of 82.38, which reflected a technical score of 49.80 and a cost score of 32.58.

On August 7, 1990, SPAWAR initiated written discussions with offerors with letters to each offeror containing specific

^{1/} According to SPAWAR, the mission of the UWP Directorate is to provide integrated cradle-to-grave support of all undersea surveillance equipment critical to the Navy's long range strategic and tactical antisubmarine warfare (ASW) effort. The principal focus of this support is the Integrated Undersea Surveillance System (IUSS), which includes the Sound Surveillance Systems--the Navy's primary fixed, long range, open ocean, initial strategic and tactical ASW sensor system--and the Surveillance Towed Array Sensor System (SURTASS)--the Navy's long range, open ocean, initial strategic and tactical ASW sensor system.

questions and requesting additional information and written clarifications of the proposal,2/ In response to this letter, EG&G, on August 14, informed SPAWAR that the discussion questions allegedly "introduce(d) new, vague and undefined requirements," which were not a part of the original RFP and favored the incumbent. Therefore, EG&G requested that 11 of the 15 technical questions be withdrawn,3/ SPAWAR asserts it disagreed with EG&G, but nevertheless revised three of the questions (Nos. 1, 3, and 4) and deleted one question as redundant. EG&G offered no further objection.

On August 22, SPAWAR received best and final offers (BAFO). TRW received a total weighted score of 89.09, which reflected a technical score of 49.36 and a cost score of 39.73. EG&G received a final weighted score of 83.88, which reflected a technical score of 44.18 and a cost score of 39.70. TRW's final cost was \$77,786,877 while EG&G's final cost was \$78,270,682.4/ SPAWAR made award to TRW, the highest rated offeror, cost and other factors considered, on November 19. EG&G protested to our Office on November 26.5/

EG&G's first contention that SPAWAR utilized improper price auctioning techniques was based upon its speculation that TRW had initially proposed a cost of between \$116,326,496 and \$123,172,192,6/ which TRW reduced after discussions with SPAWAR, to approximate EG&G's cost. EG&G speculates that

2/ The letter stated that "[y]ou are requested to update your initial proposal with additional information you believe is necessary to, at a minimum, carefully and completely address each enclosed question/comment" and that the offeror's revisions "completes the discussion/negotiation phase."

3/ EG&G did not object to the 11 cost/business questions asked.

4/ No material adjustments to the costs were made in the cost evaluation. EG&G initially contended that it proposed a lower cost than TRW. However, the protester's argument is inaccurate because it failed to factor in travel costs in the computation of its final BAFO cost.

5/ On December 5, 1990, SPAWAR advised this Office that the agency would continue performance of the contract due to urgent and compelling circumstances.

6/ EG&G arrived at this figure by multiplying a mean hourly rate of \$54.38, derived from the RFP's statement of TRW's current hourly rate for certain tasking statements, by the RFP's statement of the level of effort in the amount of 2,516,800 manhours. The record indicates that TRW's initial proposed costs approximated \$91 million.

SPAWAR must have revealed EG&G's pricing to TRW and directed it to lower its cost to be considered further.

SPAWAR specifically denies these allegations and we find no corroborating evidence in the record to support EG&G's position. Indeed, the questions directed to TRW did not indicate that it should lower its cost.^{7/} Although TRW did reduce its cost after discussions, the relatively common occurrence of a cost reduction in a competitor's BAFO is an insufficient basis to support a conclusion that the agency disclosed the protester's cost, where, as here, the record fails to show any evidence of such action. Byrne Indus., Inc., B-239200, Aug. 13, 1990, 90-2 CPD ¶ 122; Magneco Inc., B-235338, Sept. 1, 1989, 89-2 CPD ¶ 207. Moreover, the record indicates that SPAWAR analyzed TRW's documented cost reduction and found it supportable and reflective of an appropriate shift in proposal approach.

Next, EG&G argues that SPAWAR failed to conduct meaningful discussions with EG&G because the written questions allegedly did not identify deficiencies in its proposal and because the questions were addressed to matters "only minutely" related to EG&G's initial proposal. For example, EG&G argues that the TEB's evaluation report identified several weaknesses in its proposal, which SPAWAR did not bring to its attention during discussions. Moreover, EG&G argues that SPAWAR's characterization of these questions as "clarifications" was misleading and substantiates its position. In this regard, Federal Acquisition Regulation (FAR) § 15.601 defines a clarification as a communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal, which does not give the offeror the opportunity to revise or modify its proposal. Therefore, EG&G contends that SPAWAR's actions establish that it failed to conduct meaningful discussions with EG&G, while at the same time it conducted meaningful discussions with TRW.^{8/}

The requirement for meaningful discussions includes advising offerors of deficiencies in their proposals and offering them the opportunity to satisfy the government's requirements

^{7/} We have reviewed all relevant documentation regarding the evaluation of, and discussions regarding, cost that SPAWAR has provided to our Office on this matter.

^{8/} EG&G alleges that SPAWAR conducted meaningful discussions with TRW in order to justify award on the basis of technical quality. Further, it argues that the agency's report admits that discussion questions were provided to TRW covering the weak areas in TRW's proposal.

through the submission of revised proposals. Space Servs. Inc. of Am.; Space Vector Corp., B-237986; B-237986.2, Apr. 16, 1990, 90-1 CPD ¶ 392. Agencies are not, however, obligated to afford all-encompassing discussions, and where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible rating. Agencies are only required to reasonably lead offerors into those areas of their proposals needing amplification. Id.

The record indicates that the TEB determined that EG&G's initial technical proposal was acceptable and contained no deficiencies, but only weaknesses and ambiguities that needed clarification or a more detailed explanation. Indeed, EG&G's proposal was considered very strong with a well thought out methodical approach to all problems and significant corporate commitment. The TEB report found that EG&G's technical approach suffered from a lack of UWP specifics in some cases, that its approach appeared to be generic and derived from EG&G's Naval Sea Systems Command submarine program experience and that EG&G failed to propose personnel with UWP experience. The TEB also expressed some doubt whether EG&G actually understood the specific and unique problems of UWP.

With regard to the above stated concerns of the TEB,^{9/} some of the questions EG&G was asked to resolve regarding its proposal were:

"1. . . . Describe the process and the programmatic disciplines you feel are required to ensure uniform control of interfaces between Sensor System outputs in the IUSS; e.g., Describe how you will develop common operator machine interfaces for IUSS Sensor System outputs.

"3. . . . Identify in a more detailed manner any potential transition/translation problems you might encounter, if any, in providing ADP [Automatic Data Processing] and data base support interface with [the Directorate's] Apple Macintosh based ADP systems. Explain how you would resolve any such problems.

"4. . . . Expand on the support you consider necessary for the SURTASS program. Address the issues you perceive as relevant and your approach to

^{9/} These three questions are among those that were expressly objected to by EG&G as being unrelated to its proposal and the RFP requirements.

resolving those issues. Describe how the qualifications and experience of your proposed personnel relate to the task to be performed (e.g., Discuss the experience of proposed personnel in the technology and acquisition of towed array)."

We think that the foregoing, and the remaining questions that SPAWAR posed to EG&G, were sufficient to lead EG&G into the evaluated weak areas in its proposal. In this regard, EG&G's protest admits that these questions were addressed at matters only "minutely" addressed in its proposal. While EG&G correctly notes that every weakness recorded in the evaluators' rating sheets was not brought to its attention, we do not find that the procuring agency was under any obligation to do so here, since EG&G was initially rated highly favorable and the questions covered the TEB's major concerns with EG&G's proposal. See The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597.

EG&G objects that the use of the word "clarification" in the August 7 discussions letter was misleading. From reading the letter as a whole, it is clear that discussions were being conducted and the word "clarification" was being used in its broadest sense. In this regard, the agency clearly advised EG&G that it was being requested to update its initial proposal with additional information and given the opportunity to revise or modify its proposal, and submit a BAFO. See FAR § 15.601; Phoenix Medical Elecs. Servs., Inc., B-237739, Mar. 21, 1990, 90-1 CPD ¶ 312. Indeed, EG&G's contemporaneous objections to the questions shows that it realized the significance of its response to them. Although EG&G argues that it relied upon the agency's call for "written clarifications" to conclude that its proposal was technically superior, we think EG&G acted unreasonably if it chose not to conscientiously change or explain its proposal in response to the agency's questions, and that such a response was strictly a matter of its own business judgment. See Diversified Contract Servs., Inc., B-227555.3, Nov. 25, 1987, 87-2 CPD ¶ 516.


Therefore, we conclude that SPAWAR conducted meaningful discussions with EG&G. Moreover, the record does not indicate that TRW received any more thorough or specific discussions than did EG&G.

EG&G argues that SPAWAR improperly downgraded its proposal in a manner not contemplated by the RFP for lacking inside information known only to the incumbent. EG&G bases this contention on the written questions, three of which are quoted above, which EG&G asserts exceed the original RFP requirements. However, all technical questions referenced specific technical requirements in the RFP upon which each

question was based. We agree with SPAWAR that these questions were reasonably related to SPAWAR's requirements and the RFP evaluation criteria. While EG&G contends that the information solicited by these questions was known only to the incumbent, the RFP indicates, under the technical approach criterion, that the offeror's technical approach and understanding would be evaluated based upon its detailed discussion of each technical topic. In any case, the record shows that EG&G's and TRW's responses to these questions did not significantly change their technical scores. Based on our review, we find the agency's evaluation was fair, reasonable and consistent with the evaluation criteria. See Femme Comp Inc., B-239192, Aug. 13, 1990, 90-2 CPD ¶ 121.

In effect, EG&G is complaining that the incumbent may have enjoyed a competitive advantage on the procurement. However, a competitive advantage resulting from incumbency is not objectionable where the protester fails to link such advantage to preferential treatment on the government's part--which EG&G has not done. See Hummer Assocs., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. Also, we note that the RFP specifically encouraged offerors to submit questions concerning, or request clarification of, any aspect of the RFP prior to the closing date and EG&G does not argue that it availed itself of this opportunity.

The protest is denied.


for James F. Hinchman
General Counsel