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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: American Systems Corporation

File: B-247923.3

Date: September 8, 1992

Robert M. Cambridge, Esq., for the protester,
John S. Pachter, Esq., Jonathan D. Shaffer, Esq., and
Julie E. Chung, Esq., Smith, Pachter, McWhorter &
D'Ambrosio, for PRC, Inc., an interested party.
Richard L. Dunn, Esq., Defense Advanced Research Projects
Agency, for the agency.
Paula A. Williams, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency reasonably excluded protester's proposal from the competitive range, under solicitation which emphasized technical merit, where the significant weaknesses in the protester's proposal coupled with the evaluated technical superiority of the proposal which was included in the competitive range provided an appropriate basis for the agency's determination that the protester's proposal had no reasonable chance of being selected for award.

DECISION

American Systems Corporation protests the award of a cost-plus-fixed-fee contract to PRC, Inc., under request for proposals (RFP) No. MDA972-91-R-0004, issued by the Defense Advanced Research Projects Agency (DARPA) for support services related to its Undersea Warfare Office (UWO). ASC alleges that the agency utilized an inappropriate evaluation scoring scheme and improperly excluded its technically acceptable proposal from the competitive range.

We deny the protest.

This is the second protest that has been filed against the same award decision by the agency. We denied the first protest in our decision, Consultants & Designers, Inc., B-247923.2, July 22, 1992, 92-2 CPD ¶ ____, in which we set forth in detail the context of the procurement.

The RFP indicated that technical merit was significantly more important than cost, and, as amended, provided that each technical proposal would be rated and scored in accordance with the following evaluation factors, listed in descending order of importance: (1) Personnel Capabilities and Availability; (2) Administrative Support; and (3) Management Expertise.

Eight firms submitted initial proposals which were reviewed and evaluated by a Source Selection Advisory Council (SSAC) convened for this purpose. The SSAC prepared a report for the contract specialist, including a discussion of the evaluation process, the consensus ranking of the eight proposals, a narrative description of the strengths and weaknesses in each proposal, and an analysis of cost proposals. The contract specialist conducted a detailed review of the SSAC's report and returned the report to the SSAC for further action. A revised report was prepared by the SSAC and furnished to the contract specialist.

After again reviewing the results and documentation of the SSAC report, the contract specialist found three proposals technically unacceptable and five proposals, including the protester's, technically acceptable. ASC's technical proposal ranked fifth of the five technical proposals, receiving only 29 out of 75 possible points.¹ When ASC's technical and cost scores were combined--ASC's proposal offered the lowest cost--its proposal was ranked second, approximately 20 points below PRC, the highest-ranked offeror. The contract specialist concluded that only PRC's proposal had a reasonable chance of being selected for award based on the combined technical and cost evaluation, and that only PRC should be included in the competitive range. In reaching this conclusion, the contract specialist considered not only the significant spread between the overall technical point scores of PRC and ASC, but also the fact that the difference in scores was generally consistent across all technical factors. The contract specialist presented his findings, as well as the SSAC's report and supporting documentation, to the Source Selection Authority (SSA). The SSA adopted the contract specialist's determination and, as a result, only PRC's proposal was included in the competitive range. Award was ultimately made to PRC.

The protester contends that the agency decision to exclude its proposal from the competitive range was improper because its proposal was technically acceptable and offered the lowest cost. ASC does not challenge the relatively inferior

¹The agency's numeric scoring was not specified in the RFP.

evaluation of its own proposal; instead, the protester argues that DARPA should have addressed any weaknesses in its proposal through discussions.

The purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a); Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range is to be "determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award." FAR § 15.609(a). Hence, even a proposal that is technically acceptable as submitted need not be included in the competitive range when, relative to other acceptable offers, it is determined to have no reasonable chance of being selected for award. See Wordpro, Inc., B-242100.2, Apr. 24, 1991, 91-1 CPD ¶ 404; Humer Assocs., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. This "relative" approach to determining the competitive range, that is, comparing one offeror's proposal to those of other offerors, may be used even where it results in a competitive range of one. Everpure, Inc., supra; Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114. Based on our review of the record, including ASC's proposal, we find that the evaluation of ASC's proposal and the competitive range determination were reasonable.

The record indicates that there were numerous weaknesses in ASC's proposal, the most significant of which concerned the protester's failure to satisfy the personnel capabilities and availability criterion (the most important evaluation factor). For personnel capabilities assessment purposes, the solicitation required offerors to provide resumes detailing the qualifications of proposed key personnel. The RFP also required offerors to describe each individual's prior experience with various types of undersea warfare systems (e.g., anti-submarine warfare and submarine technology). The evaluators determined, based on the resumes submitted, that most of ASC's proposed key personnel had either no program management experience or limited program management experience and substantially downgraded the proposal in this area.

ASC's proposed facility, which was a significant concern with respect to administrative support, was found inferior because it: (1) was too small to accommodate necessary staff without doubling up--and was significantly smaller than what others had proposed; (2) did not identify expansion capabilities; (3) did not identify office space for up to 14 visitors as required; and (4) offered space for consultants only on an as needed basis. Accordingly, the protester's proposal was heavily downgraded in this area.

Similarly, under management expertise, ASC's proposal was evaluated as weak in understanding the roles and missions of UWO and as having failed to adequately describe the necessary automated monitoring system.

In view of the significant number of weaknesses listed above, and the fact that they concern important requirements under the solicitation, we think DARPA acted properly in excluding ASC from the competitive range because, relative to the other acceptable offerors, it had no reasonable chance of being awarded the contract. See Cook Travel, B-238527, June 13, 1990, 90-1 CPD ¶ 571. While ASC believes that its low proposed cost warranted further consideration of its proposal, its proposal was far inferior to PRC's in terms of both the key personnel and the facility proposed, as well as offeror understanding/management expertise. Since the solicitation made it clear that technical merit was the critical evaluation concern, we think the agency could reasonably determine that ASC had no reasonable chance of receiving the award. See The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271; ITECH, Inc., et al., B-231693 et al., Sept. 20, 1988, 88-2 CPD ¶ 268.

Finally, ASC complains that the scoring methodology used by the agency, 10,4,2,0 (excellent, good, acceptable and unacceptable, respectively) artificially magnified the differences between proposals such that "any small bias

²ASC also alleges that the firm was deprived of a benefit it reasonably expected to gain through discussions:

"even if it did not win [the contract], it could learn more about the agency which would allow [ASC] to prepare a better proposal in future procurements. . . ."

ASC's reliance on the competitive range determination and the ensuing discussions as a mechanism to educate the firm about its proposal is misplaced. It is the debriefing process that is the appropriate vehicle for unsuccessful offerors to obtain information that would assist them in improving their future proposals. Mutual of Omaha Ins. Co., B-203328.2, Sept. 24, 1982, 82-2 CPD ¶ 268.

(intentional or not) [becomes] a major component in the scoring."³ The protester argues that this scoring system resulted in an unreasonable score separation between good and excellent proposals.

The agency asserts that:

"The 10,4,2,0 scoring system used in the evaluation of proposals was designed to accomplish two goals:

(a) To force the evaluators to separate out the best proposals unambiguously. . . . This scoring system identifies the best proposals and by awarding extra points for excellence (or simply fewer points for being only good) serves to highlight and balance cost differences associated with lesser technical proposals. It represents a fair and equitable way of taking into account DARPA's desire to emphasize technical performance.

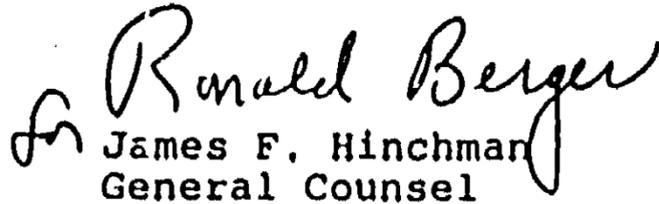
(b) To prevent scores clustering around a mean from the fact that there were so many evaluation categories (there were 18 elements evaluated). . . . [W]hen there are many evaluation categories each representing only a few points, scores based on 90 to 100 for excellent, 80 to 90 for good . . . with 50 as a passing grade, tend to push competitors together toward an inflated average score. . . ."

³ASC also protests that it was improper for the agency to wait until after award to notify the firm of its exclusion from the competitive range. FAR § 15.609(c) requires a contracting officer to notify an offeror of its elimination from the competitive range "at the earliest practicable time." See FAR § 15.1001. As we stated in our earlier decision pertaining to this procurement, the failure to comply with this requirement is a procedural irregularity that does not affect the validity of an otherwise properly awarded contract. Consultants & Designers, Inc., supra.

In addition, the protester suggests that the composition of the evaluation team may have been biased in favor of the awardee. However, nothing in the record indicates bias or bad faith on the part of the evaluators, and the protester offers no such evidence. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inferences, and suppositions as are advanced by ASC. See Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229.

We find unpersuasive the protester's contention that this numeric scoring system distorted the differences between proposals. Numerical scoring methods are valid if they give the selection official a clear understanding of the relative merit of the proposals. See Peterson Builders, Inc., B-244614, Nov. 1, 1991, 91-2 CPD ¶ 419, aff'd, B-244614.2, Apr. 7, 1992, 92-1 CPD ¶ 349. Here, we find nothing in the record which suggests that the contracting officer did not gain a clear understanding of the relative merits of the proposals. Contrary to ASC's assertion that this scoring system distorted the differences between proposals and caused its proposal to be improperly excluded from the competitive range, we are satisfied from the record that it was the contracting officer's understanding of the weaknesses in ASC's proposal vis-a-vis PRC's evaluated superiority which resulted in the determination that ASC's proposal had no reasonable chance for award.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel