



Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED VERSION

Matter of: Securiguard, Inc.

File: B-249939

Date: December 21, 1992

Robert M. Cambridge, Esq., for the protester.

Barbara S. Kinosky, Esq., for MVM, Inc., an interested party.

Barbara H. Linden, Esq., Department of Justice, for the agency.

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DIGEST

Agency did not conduct meaningful and equal discussions with the protester since the protester, the low priced offeror, was not advised during discussions of significant perceived weaknesses in its initial proposal while in contrast the awardee received discussion questions which encompassed the perceived weaknesses in its initial proposal.

DECISION

Securiguard, Inc. protests the award of a contract to MVM, Inc., under request for proposals (RFP) No. JBJMD-92-R-0014, issued by the Department of Justice (DOJ) for guard services at various DOJ facilities in Washington, D.C. The protester argues that the contracting officer failed to conduct meaningful discussions concerning perceived weaknesses in its initial proposal.

We sustain the protest.

The decision, issued on December 21, 1992, contained proprietary information and was subject to the terms of a General Accounting Office protective order. The decision was released to the parties admitted to the protective order. The parties have agreed that the decision should be released in its entirety; the decision is now removed from the coverage of the protective order.

The solicitation, issued on February 25, 1992, contemplated the award of a firm, fixed-price contract for a 1-year base period and four 1-year option periods. The solicitation required the submission of separate technical and price proposals and stated that the award would be made to the responsible offeror whose offer, conforming to the solicitation, would be most advantageous to the government, cost or price and other factors as specified in the solicitation considered.

The solicitation contained the following technical evaluation factors and the maximum weighted point values for each factor: (1) qualifications of personnel (400); (2) company management (400); and (3) past related experience and performance (200). Under the qualifications of personnel evaluation factor, offerors were required to detail the law enforcement training and experience qualifications for proposed security officers, supervisors, and contract managers, and to submit signed notices of intent to work from each proposed employee. Under the company management evaluation factor, offerors were required to submit a management plan demonstrating, among other things, an offeror's understanding of the agency's requirements; an offeror's proposed method for implementing required security services, including the assignment of a sufficient number of supervisors and managers; an offeror's ability to maintain a superior level of supervisory control; and, an offeror's proposed method of contract monitoring, including the method by which the offeror would limit turnover in the security officer and supervisory workforce and the extent to which the offeror had been successful in this regard under prior contracts. Under the past related experience and performance evaluation factor, offerors were required to provide information concerning their previous performance of the same or similar types of contracts, biographical statements of company and contract managers and of supervisors, contract references, and a self-assessment of previous performance, including the annual turnover rate among personnel for each listed prior contract and the reasons for the turnover.

The solicitation stated that between substantially equal technical proposals, price would be the determining factor for award. The solicitation also stated that between acceptable proposals with a significant difference in technical merit, the importance or weight given to price would be substantially less than the importance or weight given to the technical factors in making the award determination.

Eight firms, including the protester and MVM, submitted initial technical and price proposals by the March 27 closing date. Three members of the four-member technical

evaluation committee (TEC) individually scored each offeror's technical proposal for each technical evaluation factor. The individual evaluators' scores for each evaluation factor were averaged and then the average ratings were totaled to determine an overall technical consensus score for each offeror. The TEC members also listed the strengths and weaknesses of each offeror's technical proposal. The chairman of the TEC submitted a summary technical consensus report, which included the individual evaluators' rating reports and recommended technical discussion questions, to the contracting officer, who was responsible for evaluating price proposals and who served as the source selection authority.

The contracting officer included the proposals of five offerors, including the protester and MVM, in the competitive range. Out of a possible 1,000 points, the protester received an overall technical consensus score of 692 points and MVM received an overall technical consensus score of 865 points. The protester submitted the lowest price and MVM submitted the third lowest price.

The protester's initial technical proposal was characterized as overall "conditionally acceptable," i.e., "can be made fully acceptable by clarification, amplification, or modification of the proposal, if given the opportunity." The protester was rated good to superior with respect to the qualifications of personnel evaluation factor; satisfactory to good with respect to the company management evaluation factor; and weak to satisfactory with respect to the past related experience and performance evaluation factor. In the summary technical consensus report, the following specific weaknesses were noted in the protester's technical proposal: (1) the protester did not state whether a number of its proposed contract managers and supervisors met the law enforcement training and experience requirements as outlined in the solicitation; (2) the protester did not clearly describe how it would provide pre-employment training to proposed security officers who were currently working for the DOJ; (3) the protester did not clearly state whether the proposed contract manager was currently working for the firm or had signed a notice of intent to work; (4) a number of the protester's proposed personnel had not completed some of the required application forms; (5) the protester did not specify the proposed contract manager and supervisors currently employed by the firm and some proposed supervisors appeared to lack direct managerial and supervisory experience; (6) the protester did not adequately address the decisionmaking capabilities of the contract manager; (7) the protester did not clearly state who would be available after normal duty hours to make decisions if the contract manager were unavailable; and (8) the protester did not adequately address, as part of its management plan,

its approach for reducing turnover (for which the TEC noted the range of turnover for listed contracts previously performed by the protester),

MVM's initial technical proposal was characterized as overall "acceptable as submitted," i.e., "technically sufficient and in full compliance with solicitation requirements." MVM was rated good to superior for each of the technical evaluation factors. The following specific weaknesses were noted in MVM's technical proposal: (1) MVM appeared to propose a number of security officers who were currently serving overseas; (2) MVM currently had only one experienced supervisor, referred to by name; and (3) MVM proposed the incumbent contractor's contract manager as a supervisor if MVM were awarded the contract.

By letters dated June 16, the contracting officer conducted written discussions with the five offerors whose proposals were included in the competitive range. The discussion questions focused on technical, not price, matters. The contracting officer posed the following two discussion questions to the protester:

"1. How many (by name) of the prospective Contract Managers and Supervisors are currently working for the company? If they are not working[,] how soon would they be available if the contract is awarded?

"2. Are incumbent DOJ contract Security Officers to be included in pre-award training? If so[,] how do you plan to implement this type of training while the Security Officers are still working for the incumbent DOJ contractor?"

The contracting officer posed the following four discussion questions to MVM:

"1. Please clarify the duties of the Assistant Contract Manager. . . .

"2. Please clarify the duty status of [named individuals]. [A]re they currently on board with MVM? If so, how long and what capacity?

"3. If personnel proposed for the contract are currently serving overseas, how quickly can they be returned for contract duty, if required[?]

"4. How will the company address the apparent problem that can occur with the former [contract manager] assigned as a supervisor, working for a new [contract manager]?"

All offerors, including the protester and MVM, submitted BAFOs addressing the written technical discussion questions by the June 30 closing date. The TEC evaluated BAFOs and made no changes to any offeror's overall technical consensus score.

In making the award determination, the contracting officer calculated a final composite score for each offeror using a mathematical formula in which an offeror's overall technical consensus score was weighted at 60 percent and an offeror's BAFO price was weighted at 40 percent. MVM, the highest technically rated offeror, received the maximum weighted credit for technical merit; the protester, the offeror which submitted the lowest price, received the maximum weighted credit for price. The other offerors received proportionately lower weighted technical and price credit. The final composite scores show that MVM, which submitted the third lowest BAFO price, was ranked first overall for combined technical merit and price, and the protester, which submitted what the contracting officer characterized as an "artificially low" price, was ranked second overall for combined technical merit and price. On August 3, the contracting officer awarded a contract to MVM, a higher technically rated, higher priced offeror. The record shows that the major reason the contracting officer selected MVM for award was his concern that lower priced offerors, like the protester, would experience greater personnel turnover problems.

The protester contends that the contracting officer failed to conduct meaningful discussions concerning perceived weaknesses in its initial proposal and, as a result, the protester was improperly denied the opportunity to demonstrate that it was fully capable of satisfying the agency's requirements. Accordingly, the protester argues that the agency's evaluation of proposals was flawed and that the award to MVM, a higher technically rated, 27 percent higher priced offeror, was unreasonable.

In response, the agency states that it satisfied its obligation to conduct meaningful discussions, arguing that it was not required to discuss every element of the protester's conditionally acceptable proposal that received less than the maximum possible score. The agency maintains that the protester was not prejudiced by its failure to discuss all perceived weaknesses in its proposal. As discussed below, we think the discussions conducted by the agency were flawed and that the protester was prejudiced by the agency's improper actions.

In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are within the competitive range. 41 U.S.C.

§ 253b(d)(2) (1988); Federal Acquisition Regulation (FAR) § 15.610. Although the discussions need not be all-encompassing, discussions are required to be meaningful; that is, the agency is required to point out weaknesses, excesses, or deficiencies in proposals unless doing so would result in technical leveling. FAR § 15.610(c), (d); Manekin Corp., B-249040, Oct. 19, 1992, 92-2 CPD ¶ ____; Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527. Discussions cannot be meaningful if an offeror is not advised, in some way, of the weaknesses, excesses, or deficiencies in its proposal that must be addressed in order for the offeror to be in line for award. See id.; Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333.

Here, the record shows that the protester's initial technical proposal was characterized as overall "conditionally acceptable," which by the agency's own definition meant that the proposal "[could] be made fully acceptable by clarification, amplification, or modification, . . . if given the opportunity." Thus, this is not a case where the agency evaluators believed the protester's initial technical proposal was acceptable or did not raise concerns which required discussions. In fact, as stated above, the evaluators listed eight perceived weaknesses in the protester's initial technical proposal. Despite the eight areas of concern identified during the initial evaluation, the contracting officer asked the protester only two technical discussion questions. These questions focused on two of the perceived weaknesses in its initial technical proposal, specifically, the current availability of its proposed contract managers and supervisors and pre-employment training of proposed incumbent security officers.

There was no discussion of the protester's perceived weaknesses involving proposed employee compliance with the solicitation's law enforcement training and experience requirements, proposed employee completion of all required application forms, and proposed employee managerial, supervisory, and decisionmaking experience and capabilities. There was also no discussion of the protester's failure to clearly state the individual who would be responsible for making decisions if the protester's contract manager were unavailable after normal duty hours or the inadequacy of the protester's management approach for reducing turnover.

It is not clear from the record why the DOJ chose to ask questions about two areas of weakness in the protester's initial technical proposal but not to ask questions about any of the other six areas. One of the weaknesses not discussed--the potential for turnover--ultimately became the primary basis for the nonselection of the protester's proposal.

Specifically, the record shows that the evaluators and contracting officer were particularly concerned that the successful offeror present a specific management plan and price its proposal to minimize the problem of turnover. The TEC found that the protester's management approach with respect to plans and procedures for effectively reducing turnover was general and lacked specific details. In making his award determination, the contracting officer stated that the protester's price (which the protester reduced by only a de minimis amount in its BAFO) for this firm, fixed-price contract, considering salaries and benefits over the full term of the contract, was "artificially low," and would cause personnel turnover problems. Thus, while the issue of turnover clearly played a major, if not determinative, role in the award decision, the contracting officer did not ask the protester to provide more information concerning its management approach for limiting turnover or, having knowledge of the protester's low price, the impact of the protester's pricing scheme on turnover.¹

In contrast to how the protester was treated during discussions, the record shows that the contracting officer asked MVM technical discussion questions which specifically corresponded to all of the perceived weaknesses in its "acceptable as submitted" initial technical proposal. As stated above, three weaknesses were identified in MVM's initial technical proposal, and all three weaknesses were encompassed in the discussion questions asked of that firm. We find no explanation in the record for why the contracting officer did not conduct the same detailed discussions with

¹Turnover also was a consideration under the past related experience and performance evaluation factor in which offerors were required to give a self-assessment of previous performance, including the annual turnover rate among personnel for each listed contract and the reasons for the turnover. We agree with the agency that pure historical turnover, based on an offeror's previous experience, cannot be improved as a result of discussions. See, e.g., Veco/ Western Alaska Constr., B-243978, Sept. 9, 1991, 91-2 CPD ¶ 228. However, since the protester's range of historical turnover was referenced in the summary technical consensus report in the section listing perceived weaknesses in the protester's initial proposal, we believe that any questions the TEC had regarding the reasons for turnover on particular contracts previously performed by the protester could have appropriately been the subject of discussions. We note that in its protest, the protester has provided information which suggests that depending on how the range of historical turnover is calculated, there may not be any significant difference between the protester's and MVM's ranges of historical turnover.

the protester, a "conditionally acceptable" offeror, and under these circumstances, we therefore conclude that the discussions with the protester were neither meaningful nor equivalent to those conducted with the awardee.

While the agency notes that after the evaluation of BAFOs no technical consensus score was increased, we think it is clear that the selection of MVM was based, in part, on its satisfactory responses to the discussion questions which resolved the remaining weaknesses in its proposal. It is also clear from the record that the contracting officer's failure to identify in discussions weaknesses involving the protester's proposed personnel and its management plan, especially concerning the turnover issue, deprived the protester, whose price was low, of an opportunity to be selected for award since the issues which were important to the selection decision were never identified in discussions. Simply stated, offerors cannot be expected to improve the technical merit of their proposals when they do not know which areas in their proposals need to be clarified and addressed in greater detail. We thus find the lack of meaningful discussions was prejudicial.² See SeaSpace, 70 Comp. Gen. 268 (1991), 91-1 CPD ¶ 179; E.H. Pechan & Assocs., Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278.

We sustain the protest. By letter of today, we are recommending that the agency reopen discussions with all firms, including the protester, whose proposals are considered to be in the competitive range,³ conduct appropriate discussions with those offerors, and evaluate revised proposals in accordance with the solicitation's evaluation criteria. If MVM is no longer considered the most advantageous offeror, the agency should terminate MVM's

²In making the final award selection, the contracting officer relied on a mathematical formula in which an offeror's overall technical consensus score was weighted at 60 percent and an offeror's BAFO price was weighted at 40 percent. Given the protester's low price, if meaningful discussions had been conducted and the protester would have increased its overall technical consensus score by less than 20 points, its final composite score for technical merit and price would have been higher than MVM's composite score for technical merit and price and the protester would have been ranked first overall.

³It appears from the record that discussions with some of the other competitive range offerors also were not meaningful. The contracting officer failed to conduct specific discussions, advising them of perceived weaknesses in their initial technical and price proposals.

contract for the convenience of the government and award the contract to the most advantageous offeror. We also find that the protester is entitled to recover the costs it incurred in filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1992).

The protest is sustained.

Comptroller General
of the United States