



Decision

Matter of: Government Technology Services, Inc.; Federal Computer Corporation; Egghead Software

File: B-258082.2; B-258082.3; B-258082.4;
B-258082.5; B-258082.6; B-258082.8

Date: September 2, 1994

William M. Rosen, Esq., Dickstein, Shapiro & Morin, for Government Technology Services, Inc.; David S. Kovach, Esq., for Federal Computer Corporation; and Richard W. Oehler, Esq., Perkins Coie, for Egghead Software, the protesters. Paul Shnitzer, Esq., Crowell & Moring, for BDS, Inc., and James McAleese, Jr., Esq., McAleese & Associates, for Sylvest Management Systems Corporation, interested parties. Robert H. Barry, Jr., Esq., Defense Intelligence Agency, for the agency.

Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protesters do not have the direct economic interest required to be considered interested parties to protest the evaluation of the awardee's proposal and the source selection authority's best value determination where the record shows that even if the protests were sustained, none of the protesters would be next in line for award.

DECISION

Government Technology Services, Inc. (GTSI), Federal Computer Corporation (FCC), and Egghead Software protest the award of a contract to BDS, Inc. under request for proposals (RFP) No. MDA908-93-R-0171, issued by the Virginia Contracting Activity, Defense Intelligence Agency, for software acquisition support services. In essence, the protesters challenge the agency's evaluation of BDS' proposal and the source selection authority's (SSA) best value determination.

We dismiss the protests.

The RFP, issued on November 23, 1993, contemplated the award of a firm, fixed-price, indefinite delivery requirements contract for a base year with 4 option years. The RFP required offerors to furnish commercial or commercial-type

products of current design, currently in production or announced, which would be available to the commercial or government market on or before the date of the proposed awardee's operational compliance demonstration. The RFP stated that an offeror's failure to furnish commercial or commercial-type products would result in its proposal being rejected as technically unacceptable.

The RFP required offerors to submit separate technical, management, and cost/price proposals. The RFP, as amended, contained the following evaluation factors and their respective weights: technical--45 points, management--25 points, and cost/price--30 points. The technical and management evaluation factors each included a number of specifically weighted evaluation subfactors. The cost/price evaluation factor provided that the proposal with the lowest total evaluated price would receive the maximum number of points--30, and all other proposals would receive proportionally lower scores based on a ratio of the low priced proposal's evaluated price to the other proposals' evaluated prices. The RFP stated that award would be made to the responsible offeror whose proposal offers the best overall value, technical, management, and cost/price evaluation factors considered.

Six firms (GTSI, FCC, Egghead, BDS, Sylvest Management Systems Corporation, and another offeror) submitted initial proposals by the amended initial closing date on March 28, 1994. Seven proposals were received as GTSI submitted alternate proposals. The agency's source selection evaluation board evaluated technical and management proposals, and the agency's cost/price analyst evaluated cost/price proposals. All seven proposals were included in the competitive range. Following discussions, each competitive range offeror submitted a best and final offer (BAFO) by the June 6 closing date. Each offeror's BAFO was found technically acceptable and received a score for technical merit (technical and management combined), a score for cost/price, and a total combined score.

In accordance with the RFP, proposals were ranked in order of superiority. As reflected in the business clearance memorandum, BDS's proposal, the highest technically rated, lowest priced, was ranked first. Sylvest's proposal, the second highest technically rated, second lowest priced, was ranked second. Egghead's proposal, the third highest technically rated, fourth lowest priced, was ranked third. FCC's proposal, the fourth highest technically rated, fifth lowest priced, was ranked fourth. GTSI's proposals, the sixth and seventh highest technically rated, and third and fourth lowest priced, were ranked fifth and sixth.

The SSA--the director of the National Military Intelligence Support Center--approved the source selection advisory council's recommendation that award should be made to BDS, whose proposal provided the best overall value, technical, management, and cost/price evaluation factors considered. On July 26, the contract was awarded to BDS. These protests followed.

GTSI does not challenge the evaluation of its own proposal. Rather, its protest is primarily directed at the evaluation of BDS' proposal, arguing, for example, that the agency misevaluated the platform operability and the commercial-off-the-shelf availability of certain software offered by BDS; that the agency misevaluated BDS' pricing; that the agency allowed BDS to improperly game and shift certain costs to non-evaluated categories; that the agency improperly conducted the operational compliance demonstration of BDS' software; and that the agency's evaluation of BDS' proposal and the SSA's best value determination were flawed. GTSI also makes sweeping general assertions such as: "on information and belief, the [agency's] misevaluation [of the platform operability and the commercial availability of certain software] is not limited to BDS' offer, but rather was widespread"; "[u]pon information and belief, the [agency's] failure to review compliance with the commerciality requirements was not limited to its flawed review of BDS' offer"; and "the improper evaluation was undoubtedly performed across the board."

FCC's assertions are also primarily directed at BDS's proposal evaluation. In addition, FCC contends that the entire procurement was flawed because the agency waived or relaxed commercial-off-the-shelf and pricing requirements and/or evaluation factors for BDS, but not for FCC or other offerors. As a result, FCC maintains that the agency improperly accepted a nonconforming proposal from BDS and must resolicit its requirements on the basis of appropriate requirements and/or evaluation factors so that all offerors can compete on a common basis.

Egghead makes no specific arguments challenging the award to BDS, but rather simply adopts and incorporates by reference the arguments made by other protesters to the extent these arguments are not prejudicial to its position. GTSI and FCC also make similar incorporations by reference.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award the

contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1994). Determining whether a party is sufficiently interested involves consideration of a party's status in relation to a procurement. Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our Bid Protest Regulations. Panhandle Venture V; Sterling Inv. Properties, Inc.--Recon., B-252982.3; B-252982.4, Sept. 1, 1993, 93-2 CPD ¶ 142. A protester is not an interested party if it would not be in line for award if its protest were sustained. Abre Enters., Inc., B-251569.2, Mar. 16, 1993, 93-1 CPD ¶ 239.

Here, while GTSI, FCC, and Egghead challenge the agency's evaluation of BDS' proposal and the SSA's resulting best value determination, none of these protesters challenge the agency's evaluation of the proposals of the higher ranked intervening offerors vis-a-vis their own relevant rankings. Even if these protests were sustained, it is clear that Sylvest would be next in line for award as its proposal was ranked second, and we note that Sylvest has filed its own protest challenging the award to BDS on grounds similar to those raised by these protesters. Accordingly, GTSI, FCC, and Egghead lack the requisite direct economic interest to be considered interested parties to protest the award to BDS. The Law Co., B-248631, Sept. 10, 1992, 92-2 CPD ¶ 165.

GTSI also asserts that it is an interested party to protest the award to BDS because it has, in fact, challenged the agency's evaluation of the proposals of the higher ranked intervening offerors by including in its protest statements such as "on information and belief," the allegedly flawed evaluation of the platform operability and the commercial availability of certain software was not "limited to BDS' offer, but rather ~~improperly~~ widespread," and "that the evaluation was undoubtedly performed across the board."

In our view, this argument amounts to nothing more than mere speculation. In this regard, our Bid Protest Regulations require that a protest "set forth a detailed statement of the legal and factual grounds of protest," 4 C.F.R. § 21.1(c)(4), and "clearly state legally sufficient grounds of protest." 4 C.F.R. § 21.1(e). GTSI's use of the term "widespread" and the phrase "across the board" provides no identification of which of the higher ranked intervening proposals allegedly received improper and flawed evaluations, nor any specifics regarding the alleged improprieties. In our view, such speculative and conclusory general statements are insufficient to constitute a proper challenge by GTSI of the agency's evaluation of the

proposals of the higher ranked intervening offerors such that GTSI could be considered an interested party to protest the award to BDS. See Federal Computer Int'l Corp.--Recon., B-257618.2, July 14, 1994, 94-2 CPD ¶ ____.

FCC also argues that it is an interested party to protest the award to BDS because the entire procurement was flawed due to the agency's alleged waiver or relaxation of the commercial-off-the-shelf and pricing requirements and/or evaluation factors for BDS, but not for FCC or other offerors. As a result, FCC maintains that the agency improperly accepted a nonconforming proposal from BDS and must resolicit on the basis of waived or relaxed requirements and/or evaluation factors so that all offerors can compete on a common basis.

Even if we were to assume that the agency waived or relaxed requirements and/or evaluation factors for BDS, thus making the award to BDS improper, there is no basis to conclude that the agency would be required to resolicit its requirements. Rather, as the record contains no indication that the RFP contains other than the agency's minimum requirements, if BDS' proposal were found to be technically noncompliant, the agency could properly and reasonably award the contract to Sylvest, the second highest ranked offeror whose proposal has not been challenged as nonconforming by FCC or any other protester. See Panhandle Ventura V: Sterling Inv. Properties, Inc.--Recon., supra. Accordingly, FCC's interest, even under this theory of the case, is too remote to establish that it is an interested party for purposes of protesting the award to BDS.

The protests are dismissed.

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¹This analysis also applies to Egghead's failure to make any specific arguments in its protest challenging the award to BDS, and to the attempts by all three protesters to establish their interested party status by merely adopting and incorporating by reference within their own protests the arguments made by other protesters.