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

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REDACTED VERSION*

Decision

Matter of: DAE Corporation
File: B-259866; B-259866.2
Date: May 8, 1995

Paralee White, Esq., Laurel A. Hockey, Esq., and G. Brent Connor, Esq., Cohen & White, for the protester. Pamela J. Mazza, Esq., Philip M. Dearborn, Esq., and Antonio R. Franco, Esq., Piliero, Mazza & Pergament, for Enterprise Advisory Services, Inc., an interested party. Ronald E. Cone, and Wendy E. Ojeda, Esq., Department of Energy, for the agency. Peter A. Iannicelli, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency was not required to hold discussions regarding several weaknesses identified in the protester's proposal since the proposal was rated as satisfactory or better on the evaluation criteria/subcriteria under which the weaknesses were evaluated, and agencies are not required to point out elements of acceptable proposals that receive less than the maximum evaluation score.

DECISION

DAE Corporation protests the proposed award of an 8(a) contract for administrative support services to Enterprise Advisory Services, Inc. (EASI) by the Department of Energy (DOE) pursuant to request for proposals (RFP) No. DE-RP05-940R22200. The protester alleges that DOE did not hold meaningful discussions with it.

We deny the protest.

*The decision issued on May 8, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

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cost. On December 15, the contracting officer notified both offerors that she was awarding the contract to EASI, and DAE filed the first of several protests with our Office on December 30.

In its initial protest, DAE made only a general argument that discussions were inadequate. By letter of January 27, 1995, after being debriefed, DAE filed a supplemental protest, asserting that the agency should have held discussions with it concerning seven specific areas of its proposal. This decision will address the adequacy of discussions. DAE also raised several other protest grounds that will not be addressed in this decision. In its January 27 letter, DAE also alleged that its proposal was improperly evaluated, that DOE engaged in technical leveling and transfusion, and that DOE treated offerors unequally during discussions. We dismissed these additional protest grounds, on March 6, because DAE had not provided sufficient factual information or any evidence establishing the likelihood that DOE had violated procurement laws or regulations. By letter of April 3, DAE also protested that DOE gave EASI's proposal a technical score that was too high; we dismissed this protest ground as untimely on April 13.²

The protester contends that DOE did not hold meaningful discussions with it. In a written debriefing document, DOE described seven weaknesses in DAE's BAFO. DAE argues that DOE either did not hold discussions at all or that the discussions held were inadequate on each of the seven aspects of its proposal that were perceived as containing weaknesses. According to DAE, if DOE had held meaningful discussions with it, it would have revised its second BAFO to respond to the agency's concerns and would have been able to improve its technical and management scores sufficiently to have been selected for award as the best overall value to the government.

²By letter of April 17, DAE, in effect, asked for reconsideration of our dismissal of its April 3 protest and stated for the first time the facts upon which it bases its argument that the protest was timely. However, before we dismissed the protest, we gave DAE an opportunity to explain why the protest was timely; DAE responded but did not set forth the facts supporting its claim of timeliness. A protester has an obligation to include in its protest all information establishing the timeliness of the protest and may not introduce such information for the first time in its reconsideration request. 4 C.F.R. § 21.2(b) (1995); see CardioMetrix--Recon., B-255656.2, Apr. 11, 1994, 94-1 CPD ¶ 249.

The seven identified weaknesses were

1. "Although the proposal indicates that the Program Manager has experience in managing people, project, schedules, financial resources and time in a multi-tasking environment, the proposal does not [deleted].
2. "The proposal provides [deleted] its overall plan for administration of future procurements.
3. "Although the proposal outlines the company affiliation of the key personnel, it does not specifically outline [deleted].
4. "The proposal states that the QA [quality assurance] and ES&H [environmental, safety, and health) programs will be operated by [deleted]. Lack of commitment to the QA & ES&H programs is indicated by DAE [deleted]. This method will not [deleted].
5. "The proposal does not describe the [deleted] compensation system which affects approximately [deleted] employees for the life of the contract.
6. "The statement reflected on page 79, [deleted] is unclear.
7. "Success of the diversity program to be lead by the Program Manager is questionable due to the [deleted]."

The agency reports that neither competitive range offeror's proposal was considered deficient or unacceptable, and, while DAE's proposal contained some weaknesses, all of the weaknesses were addressed in either the written or oral discussions. DOE also reports that in several instances DAE assuaged the evaluators' concerns during its oral presentation but did not incorporate the oral presentation into its BAFO or revised BAFO as it was directed to do and, therefore, the proposal still contained various weaknesses.

Agencies are required to conduct meaningful discussions with all competitive range offerors. See Johnson Controls World Servs. Inc., B-257431; B-257431.5, Oct. 5, 1994, 94-2 CPD ¶ 222; Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. In order for discussions to be meaningful, contracting officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. However, the agency is not

obligated to discuss every aspect of an acceptable proposal that receives less than the maximum score. Id.; Veco/W. Alaska Constr., B-243978, Sept. 9, 1991, 91-2 CPD ¶ 228.

The protester contends that the request for a second BAFO after the deletion of the Fernald option amounted to a reopening of discussions requiring DOE to discuss anew each and every area of its proposal that was perceived as a weakness. DAE argues that, prior to receiving second BAFOs, DOE should have discussed again weaknesses that were discussed prior to receiving first BAFOs but which still remained as well as weaknesses that were first introduced in DAE's first BAFO. We disagree. In appropriate circumstances, a contracting agency may allow offerors to submit revised proposals without engaging in technical discussions or may limit the technical revisions that offerors can make after conducting discussions. See, e.g., System Planning Corp., B-244697.4, June 15, 1992, 92-1 CPD ¶ 516, and Metron Corp., B-227014, June 29, 1987, 87-1 CPD ¶ 642. Because deletion of the Fernald work represented a reduction of only about 1 percent of the total work requirement, and because DOE had already engaged in extensive technical discussions with both offerors and believed their first BAFOs to be acceptable in all areas of the evaluation, DOE reasonably decided that further technical discussions were not necessary.

In addition, our examination of the evaluation documents reveals that, while the above-quoted criticisms were in fact made in the debriefing document, the evaluation board did not find that DAE's proposal was deficient in any way. Thus, even though the evaluators believed there were weaknesses in the proposal, the evaluation board rated the proposal as satisfactory or better on each evaluation criterion or subcriterion under which the weaknesses were evaluated.

The first weakness was evaluated under a subcriterion of the personnel resources and experience evaluation criterion which required offers to show the specific experience, qualifications, availability, and commitment of all key personnel. Even though the evaluators believed that DAE's proposed program manager's resume [deleted], they also recognized him as a strength of the proposal and rated DAE's proposal as "good." The second, third, and fourth weaknesses were evaluated under a subcriterion of the planned approach evaluation criterion which included, among other things, evaluation of how the offeror would accomplish the administrative effort, organizational structure, delegation of responsibilities/authorities, cost controls, management control systems to assure timeliness of deliverables, and efficient utilization of resources. In

addition to the listed weaknesses, the evaluators noted several strengths in DAE's planned approach and, therefore, rated DAE's proposal as "good." The fifth, sixth, and seventh weaknesses were evaluated under a subcriterion of the planned approach criterion which involved evaluation of the offeror's planned approach to human resources and diversity (affirmative action and equal employment opportunity) programs. Notwithstanding the weaknesses, the evaluators also recognized several strengths of the proposal and gave it a "satisfactory" rating.

As noted earlier, an agency is not obligated to discuss every aspect of an acceptable proposal that receives less than the maximum score. Therefore, since DOE's evaluators rated DAE's proposal as satisfactory or better on every evaluation criteria/subcriteria under which the weaknesses were evaluated, DOE was not required to discuss these matters with DAE. See Johnson Controls World Servs. Inc., supra; see also Systems Research and Applications Corp., B-257939.5, Feb. 28, 1995, 95-1 CPD ¶ 214.

The protest is denied.

Robert P. Murphy
General Counsel