

Digital Systems Group, Inc., B-286931; B-286931.2, March 7, 2001



Decision

Matter of: Digital Systems Group, Inc.

File: B-286931; B-286931.2

Date: March 7, 2001

Robert G. Fryling, Esq., and Edward J. Hoffman, Esq., Blank Rome Comisky & McCauley, for the protester.

J. Andrew Jackson, Esq., and Tina D. Reynolds, Esq., Dickstein, Shapiro, Morin & Oshinsky, for Oracle Corporation, the intervenor.

Maria G. Bellizzi, Esq., General Services Administration, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's allegation that the evaluation of its technical proposal as posing a "high" risk contradicts the rating of its cost proposal as "low" risk is denied, where the record shows that technical and cost proposals were rated separately by different evaluation teams which considered different factors, and the different ratings merely reflect the independent judgments of the evaluators and are reasonably supported by the record.
2. Agency was not required to conduct discussions regarding two weaknesses identified in the protester's proposal regarding its past performance since the two weaknesses (which pertained to only 2 out of 20 performance questionnaire items) were not considered significant, and protester's performance record was rated acceptable overall. Agencies are not required to point out every element of acceptable proposals that receive less than the maximum evaluation rating.
3. Protester's allegation that the agency improperly conducted discussions is denied, where the record shows that during several rounds of discussions, the agency reasonably led the protester into areas of its proposal requiring revision, and the protester's failure to make those revisions because it feared jeopardizing its favorable cost rating reflected its own business judgment, rather than any improper agency action.
4. Discussions with offeror whose otherwise acceptable proposal took exception to certain solicitation requirements were unobjectionable where agency reasonably determined that proposal could be made acceptable through discussions and that exceptions were primarily the result of defects in solicitation; ultimate decision to amend the solicitation to cure defects was unobjectionable since agency advised all offerors of the changed requirements and all offerors responded to the amended solicitation in final.

proposals.

5. Allegation that contracting officer's (CO) multiple roles impermissibly compromised his independence is denied, where there is no evidence in the record that the CO had any influence over the evaluation of technical or cost proposals, or that the CO's carrying out of his responsibilities in any way compromised the source selection.

DECISION

Digital Systems Group, Inc. (DSG) protests the issuance of a blanket purchase agreement (BPA) to Oracle Corporation under request for quotations (RFQ) No. TFW-00-0002, issued by the General Services Administration (GSA), FTS/Financial Management Systems Services Center, for an integrated financial management system for the Peace Corps. DSG challenges the issuance of the BPA on several grounds, including that GSA unreasonably evaluated its technical and cost proposals; failed to conduct adequate discussions with DSG; improperly failed to provide DSG with an opportunity to comment on allegedly negative past performance information obtained from one reference; and improperly conducted multiple rounds of discussions to favor Oracle. DSG also challenges the contracting officer's role in the procurement and contends that the cost/benefit tradeoff decision was not adequately justified.

We deny the protest.

BACKGROUND

The RFQ, issued on April 21, 2000, contemplated that GSA would issue a BPA for the acquisition of an integrated financial management system, for a base year with up to nine 1-year options. Agency Report (AR) exh. 1, RFQ §§ B.1, B.5.1, § L.19. [1] The RFQ stated that the objective was to procure a fully integrated financial management system supporting all of the Peace Corps's financial management and business processes. *Id.* §§ C.2, C.2.1, at C-11, C-12.

Vendors were required to submit separate technical and cost proposals, *id.* § L.2., and were to provide fixed prices for software, maintenance, training, and documentation (*i.e.*, products), and fixed hourly rates for technical assistance (*i.e.*, services); the Peace Corps would issue task and/or delivery orders based on this price list. The RFQ further explained that task and delivery orders for products only would be issued on a fixed-price basis, while orders that combined products and services would establish a ceiling amount or maximum number of hours of work, as appropriate.

Section M of the RFQ listed management and technical, and cost as evaluation areas, with the management and technical area considered significantly more important than cost. The management and technical area contained items and factors as follows:

Management and Technical Area

Item: Management Approach

Factor: Corporate Ability

Factor: Performance Record

Item: Functional/Technical

Factor: Functional Requirements

Factor: Technical Requirements

Item: Products and Services

Factor: Implementation

Factor: Training

Factor: Software Support

Id. § M.

Within the cost area, the RFQ stated that proposals would be evaluated to determine the expected contract cost and realism. In addition, the government was to perform a price analysis for completeness, realism, reasonableness, and risk. RFQ § M.3.4.2. The evaluation was to include a risk assessment for the overall management and technical area and for each of the items listed within the management and technical area. In addition, the RFQ stated that the government would assess the technical risk associated with the vendor's schedule, cost/price, and performance. Issuance of the BPA was to be based on the proposal deemed to provide the best overall value to the government. Id. § M.2.

Three vendors, including DSG and Oracle, responded to the RFQ by the time set on June 12. A source selection evaluation board (SSEB) evaluated the technical and management area by assigning color ratings of blue (exceptional), green (acceptable), yellow (marginal), or red (unacceptable), at the area and item levels; and risk ratings of low, moderate, or high at the area, item, and factor levels. Based on that evaluation, the SSEB prepared clarification reports (CR) and deficiency reports (DR) for all vendors. The cost team separately evaluated costs to determine expected contract costs, and to assess completeness of proposals, and cost realism, reasonableness, and risk.

In addition to written proposals, vendors were requested to perform an operational capabilities demonstration to provide the Peace Corps with a better understanding of the functional and operational capabilities of the vendors' proposed software, and to verify that the offered software satisfied the RFQ's requirements. The SSEB then revised its initial evaluation reports, taking into account the demonstrations, as well as the vendors' responses to the CRs and DRs. The agency also prepared points for negotiation (PFN) for each vendor.

Following the evaluations, the agency conducted written and oral discussions, requested and received final

proposal revisions (FPR), and evaluated proposals based on FPRs. Based on the results of the evaluation, it concluded that discussions had been inadequate. Accordingly, discussions were reopened with all vendors and another round of FPRs requested and evaluated. On October 18, the agency amended the RFQ to cure certain defects in the solicitation, reopened discussions with all offerors, and requested and reevaluated at third round of FPRs. On November 9, the SSEB submitted its finalized evaluation to the source selection advisory council (SSAC).

The following matrix summarizes the SSEB's overall technical evaluation results at the area and item levels:

	Oracle	DSG	Offeror A
	Color/Risk	Color/Risk	Color/Risk
Mgmt/Technical	Green/Moderate	Yellow/High	Yellow/High
Mgmt Approach	Blue/Moderate	Green/Moderate	Green/High
Funct. & Tech.	Green/Moderate	Yellow/High	Yellow/High
Prods. & Servs.	Blue/Low	Green/Moderate	Green/Moderate

AR exh. 5.a, SSEB Report to the SSAC, Nov, 9, 2000, at 3-4, 12-13, 19-20. [2]

A cost team separately evaluated vendors' cost proposals by considering all known and quantifiable costs for the base and option years, for a total of 10 years. For each

vendor, the cost team developed expected total cost of ownership (TCO), assessed costs for realism, completeness, and reasonableness, and assigned each cost proposal an overall risk rating, with the following results:

Vendor	TCO	Risk
DSG (Alternate)	\$18,173,027	Low
DSG (Primary)	18,823,089	Low
Offeror A (Primary)	25,762,505	Moderate
Oracle (Alternate)	28,164,718	Moderate
Offeror A (Alternate)	28,294,020	Moderate
Oracle (Primary)	32,286,045	Moderate

AR exh. 5.a, Cost Evaluation Report, at 8.

The SSAC reviewed the SSEB's report, including the strengths, weaknesses, risks, and color ratings assigned the proposals, and found Oracle's proposal technically superior to those of the other two vendors.

Based on its review, the SSAC specifically concluded that the superior technical ratings and lower risks associated with Oracle's approach justified paying a premium for that firm's proposal, and recommended that the source selection authority (SSA) issue a BPA to Oracle. AR exh. 7, SSAC Analysis Report, Nov. 13, 2000, at 15. The SSA concurred with the SSEB's findings and the SSAC's recommendation, and issued the BPA to Oracle. Id. exh. 8, Source Selection Decision, Nov. 16, 2000. This protest followed a debriefing by GSA.

PROTESTER'S CONTENTIONS

DSG challenges the issuance of the BPA to Oracle on several grounds. First, DSG maintains that the evaluation of its proposal was unreasonable. In this regard, DSG primarily argues that the "high" risk rating assigned its technical proposal is inconsistent with the finding of the cost team that its cost proposal presented a "low" risk. With respect to the adequacy of discussions, DSG also argues that the agency effectively precluded DSG from correcting identified weaknesses in its proposal because DSG feared that making the necessary corrections would jeopardize the low risk rating assigned its cost.

DSG also argues that the agency improperly failed to provide DSG with an opportunity to comment on allegedly negative past performance information GSA obtained from one reference. The protester further argues that GSA improperly conducted multiple rounds of discussions which favored Oracle. DSG also objects to the contracting officer's (CO) role in this procurement, and alleges that he failed to adequately document the cost/technical tradeoff decision.

DISCUSSION

As a preliminary matter, the RFQ stated that the agency intended to issue a BPA against the vendor's GSA federal supply schedule contract. Accordingly, the provisions of Federal Acquisition Regulation (FAR) Subpart 8.4 apply here. Those provisions anticipate agencies reviewing vendors' federal supply schedules--in effect, their catalogs--and then placing an order directly with the schedule contractor that can provide the supply or services that represent the best value and meets the government's needs. ~~FAR~~ FAR § 8.404(b)(2); Amdahl Corp., B-281255, Dec. 28, 1998, 98-2 CPD ¶ 161 at 3. Pursuant to ~~FAR~~ FAR § 8.402, GSA has established special ordering procedures applicable where, as here, the government's requirement involves products as well as services. [3] Those procedures direct the agency to prepare a statement of work describing the work to be performed and to notify vendors of the basis to be used for selecting a vendor. The procedures also state that the agency may ask vendors to submit a project plan responding to the statement of work, as well as information on the vendors' experience or past performance of similar tasks. The procedures provide that the ordering office should select the contractor that represents the best value.

Further, where the agency intends to use the vendors' responses as the basis of a detailed technical evaluation and cost/technical tradeoff, it may elect, as GSA did here, to use an approach that is like a competition in a negotiated procurement. Where the agency does that and a protest is then filed, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. Specifically, the record here is clear that GSA treated vendors' responses as if it were conducting a negotiated procurement. For instance, the RFQ specifically refers to discussions and the evaluation of proposals. RFQ § L.2.2. In addition, the Proposal Evaluation Guide prepared for this acquisition provides specific procedures for the SSEB to conduct detailed evaluations, for establishing a competitive range, and for conducting discussions. AR exh. 2.a. Accordingly, while the provisions of FAR Part 15, governing contracting by negotiation, do not directly apply, Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4, we analyze DSG's contentions by the standards applied to negotiated procurements.

DSG argues that the evaluation of its technical and cost proposals was "contradictory." According to DSG, it was unreasonable for the agency to rate DSG's cost proposal as "low" risk, while at the same time assigning a "high" risk rating to its technical proposal under the functional/technical item. DSG also argues that the agency conducted inadequate discussions with the firm.

In its report to our Office, GSA provided a detailed response to the evaluation and discussion challenges DSG raised in its protest. In its comments, however, DSG did not rebut any aspect of the agency's explanation concerning the allegedly contradictory evaluation or alleged lack of adequate discussions. Instead, DSG requested that these issues be decided on the existing record. See 4 C.F.R. § 21.3(c)(2000). ⁶ This decision addresses the specific issues discussed in DSG's comments, as well as some examples of the issues decided on the record.

Evaluation of DSG's Proposal

The evaluation of technical proposals, including the evaluation of past performance, is a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 ⁷ at 3. In reviewing an agency's technical evaluation, we will not reevaluate the proposals, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with the stated evaluation criteria. Id. Technical evaluators have considerable latitude in assigning ratings which reflect their subjective judgments of a proposal's relative merits. I.S. Grupe, Inc., B-278839, Mar 20, 1998, 98-1 CPD ¶ 86 ⁸ at 5. Evaluators may have different judgments as to a proposal's merits, and one evaluator's scoring is not unreasonable merely because it is based on judgments different from those of other evaluators. Arsenault Acquisition Corp.; East Mulberry, LLC, B-276959, B-276959.2, Aug 12, 1997, 97-2 CPD ¶ 74 ⁹ at 4.

With respect to the evaluation issues to be decided on the record, we have reviewed the record and GSA's detailed explanation and find nothing unreasonable or contradictory about the evaluation of DSG's technical and cost proposals. The agency explains, and the record shows, that technical and cost proposals were evaluated separately by different teams comprised of different evaluators, each of whom assigned different risk ratings taking into consideration a variety of factors. The cost team found DSG's costs were complete, reasonable, and adequate to implement its proposed solution, and concluded that DSG's proposal presented a low risk. See AR exh. 5.a, Cost Evaluation Report. By contrast, the SSEB documented numerous technical and functional risks with DSG's approach, which would likely disrupt the performance schedule, increase cost, or degrade performance, resulting in a "high" risk rating for this item. See AR exh. 5.a, SSEB Report to the SSAC, ¶ 4.3.2, Item Risk Assessment, at 21.

In view of the numerous risks and weaknesses the SSEB documented--both functional and technical--which DSG does not contest, we think that an overall risk assessment of "high" under the functional and technical evaluation item is reasonably supported. The different risk ratings assigned DSG's cost and technical proposals merely reflect the independent judgments of the cost team and the technical evaluators, which assessed different aspects of the proposals and are reasonably supported by the record. Given the different conclusions of the evaluators, the fact that the cost and technical risk ratings differed is neither unreasonable, nor "contradictory."

We now turn to DSG's allegation that GSA conducted inadequate discussions with the firm. According to DSG, the agency's discussions effectively precluded DSG from correcting the identified weaknesses because it feared that the corrections would jeopardize the reasonableness of, and low risk rating, assigned its cost proposal. The protester maintains that GSA should have either advised DSG that its cost was too

low, or informed DSG of the amount GSA was willing to spend if DSG were to correct the weaknesses in its proposal.

Discussions must be meaningful, equitable, not misleading, and fair. I.T.S. Corp., B-280431, Sept. 29, 1998, 98-2 CPD ¶ 89 at 6. While agencies generally are required to conduct meaningful discussions by leading offerors into the areas of their proposals requiring amplification, this does not mean that an agency must "spoon-feed" an offeror as to each and every item that must be revised or otherwise addressed to improve a proposal. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6. Based on our review of the record, we conclude that DSG's argument is not supported. 10

Here, the record shows, and DSG does not deny, that during several rounds of discussions, GSA provided DSG with numerous CRs and DRs. Each separate CR or DR specifically identified the area of DSG's proposal requiring clarification or further explanation; listed the corresponding RFQ sections; and described GSA's specific concern and the requested action. AR exh. 6.a. In addition, prior to conducting oral discussions, the agency provided DSG with individual PFNs, each describing distinct areas in DSG's proposal that remained unclear or required further explanation. AR exh. 6.b. In addition to the CRs, DRs, and PFNs, the agency subsequently provided DSG with the strengths and weaknesses the SSEB had identified in its proposal. Thus, to the extent that DSG argues that it was not adequately apprised of how it needed to revise its proposal, its contention is without merit. The record clearly shows that during several rounds of discussions, the agency advised DSG of areas of its proposal requiring revision, and DSG simply failed to do so. Further, there is no legal requirement for an agency to inform an offeror of the premium it is willing to spend for an improved proposal. Thus, DSG's failure to cure weaknesses in its proposal to its detriment--because it feared that such corrections might have affected favorable ratings assigned its cost proposal--reflects DSG's own business judgment, and was not the result of any improper action on the agency's part.

Past Performance Evaluation

Within the management approach item, under the performance record evaluation factor, the agency was to rate two subfactors--experience and customer satisfaction. RFQ § M.3.4.1.1. This evaluation was to include an assessment of vendors' experience for the last 3 to 5 years for software implemented at similar institutions (i.e., federal, other public sector, or not-for-profit agencies); as well as an assessment of corporate experience providing software products, technical support services, maintenance support, and training to federal agencies and/or international organizations. Id. In addition, the agency was to assess the vendors' record of satisfying customer functional and technical needs, meeting cost, schedule, and performance requirements, and performing in a professional manner. Id.

To assist the agency in evaluating past performance, vendors were instructed to provide a list of references for the last 3 to 5 years for five software implementations for similar institutions, and a description of each project. RFQ § L.3.1.7.2.1. In addition, vendors were responsible for sending a Performance Record Questionnaire (PRQ), which was provided as an attachment to the RFQ, to be completed by their references and submitted directly to the contracting officer. Id. § L.3.1.7.2.2. The PRQ requested respondents to rate the vendors' performance (ranging from "unsatisfactory" to "exceptional") on approximately 20 items, and provide narrative comments for each item where appropriate.

The record contains completed PRQs the agency obtained from three of DSG's references--[DELETED].

[⁴] The completed PRQs show that except for two items where the respondent rated DSG "marginal" (concerning DSG's ability to operate at or below budget and effectiveness of training), DSG's performance was rated either "satisfactory," "very good," or "exceptional." [⁵] With respect to the only two items where [DELETED] rated DSG's performance as "marginal," the agency explains that the SSEB contacted the

[DELETED] respondent, and verified the accuracy of the ratings. AR at 42. Based on its consideration of all of the completed PRQs, the SSEB rated DSG's proposal under the performance record factor as green (acceptable) with moderate risk.

The protester argues that GSA should have given DSG an opportunity to comment on the two items rated marginal by the [DELETED] respondent because they were considered "significant weaknesses" in its proposal. According to the protester, had the agency given DSG an opportunity to comment on those two ratings, it could have provided information showing that the marginal ratings did not accurately reflect its performance. DSG also challenges its overall performance record rating.

Although, as noted above, FAR Part 15 does not directly apply here, the provisions of the FAR and our cases provide guidance regarding the adequacy of discussions. FAR § 15.306(d)(3) provides, in pertinent part, that: //

[t]he contracting officer shall . . . indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. The scope and extent of discussions are a matter of contracting officer judgment.

With respect to the two marginal ratings, DSG is essentially arguing that since its proposal received less than a perfect rating under the performance record factor, GSA should have discussed with DSG the two marginal ratings obtained from the [DELETED] respondent so as to provide DSG with an opportunity to improve its proposal under this factor. [6] We disagree.

First, while the record shows that in its final report to the SSAC, the SSEB noted the two marginal ratings as weaknesses in DSG's proposal, contrary to DSG's position, they were considered neither "significant weaknesses" nor "deficiencies." See FAR § 15.306(d)(3). As noted above, the FAR also states that the CO is to discuss "other aspects" of a proposal, such as past performance information, which, in the CO's judgment, could be altered or explained to materially enhance the offeror's potential for award. The record shows that the three references generally considered DSG's past performance favorably, rating the firm's performance as either exceptional or very good overall, and that GSA rated DSG's proposal in this area acceptable overall, the highest rating other than "exceptional" under the adjectival rating scheme used here. Under these circumstances, it is reasonable to conclude that the two marginal ratings in FEMA's PRQ did not constitute aspects of DSG's proposal that could have been altered or explained to enhance materially DSG's potential for award, as contemplated by FAR § 15.306(d)(3), and thus that discussions on this point were not required. See ITT Fed. Servs. Int'l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 16; MCR Fed., Inc., B-280969, Dec. 14, 1998, 99-1 CPD ¶ 8 at 11, citing DAE Corp., B-259866, B-259866.2, May 8, 1995, 95-2 CPD ¶ 12 at 4-5 (an agency is not required to discuss every aspect of an offeror's acceptable proposal that receives less than the maximum score). [7] 12 13 14

DSG also argues that the agency unreasonably rated its performance as only acceptable, pointing out that most of the responses GSA obtained from its references rated its performance either as "very good" or "exceptional." According to DSG, even assuming that the two marginal ratings obtained from [DELETED] were accurate, its proposal should have been rated better than acceptable overall--i.e., exceptional--under the performance record factor. We disagree. As even DSG recognizes, the completed PRQs from DSG's references included several items rated "satisfactory" and "very good"--i.e., lower than "exceptional" ratings--indicating that those respondents concluded that DSG's performance did not warrant a rating of "exceptional" for those items. Accordingly, based on our review of the completed PRQs in the record, we think that the SSEB reasonably rated DSG's performance record as acceptable overall, rather than as

exceptional.

Cost/Technical Tradeoff Issue

DSG next argues that the SSA improperly failed to adequately document the basis for issuing the BPA to Oracle at a higher cost than DSG's.

In deciding between competing proposals, cost/technical tradeoffs may be made, the propriety of which turns not on the difference in technical scores or ratings per se, but on whether the source selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP evaluation scheme. Southwestern Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 17; DynCorp, B-245289.3, July 30, 1992, 93-1 CPD ¶ 69 at 8. Even where a source selection official does not specifically discuss the cost/technical tradeoff in the source selection decision itself, we will not object if the tradeoff is otherwise reasonable based upon the record before us. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 12-13. 5
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Based on our review of the SSEB's final report to the SSAC, and the SSAC's findings, we conclude that the SSA's tradeoff decision is reasonably supported. For instance, in its report, for each of the three proposals considered, the SSEB documented the specific strengths and weaknesses found under all of the evaluation items and factors. The record shows that the SSEB presented to the SSAC a detailed description of the strengths, weaknesses, risks, and rationale for the color ratings at the item and area levels for each proposal. The SSAC accepted the SSEB's findings, and, relying on those findings, conducted an in-depth comparative analysis of the proposals to make its recommendation to the SSA. Below we discuss some of the SSAC's most significant points.

The SSAC noted that at the highest level of the evaluation spectrum, the management and technical area, Oracle's proposal was rated green (acceptable), while DSG's proposal was rated yellow (marginal). The SSAC further noted that at item levels, Oracle's proposal was rated blue (exceptional) under the management approach item, while DSG's proposal was rated green (acceptable). Under the functional and technical item, Oracle's proposal was rated green (acceptable), while DSG's proposals were rated yellow (marginal). Finally, the SSAC noted that under the products and services item, Oracle's proposal was rated blue (exceptional), while DSG's proposal earned a lower rating of green (acceptable). In sum, the SSAC concluded that Oracle's proposal was rated technically superior to DSG's (and Offeror A's) in all evaluation areas and item levels.

In terms of specific strengths and weaknesses, the SSAC recognized that the SSEB identified 46 strengths and only 7 weaknesses associated with Oracle's proposal, compared with only 16 strengths and 24 weaknesses in DSG's proposal. In its final report, the SSAC discussed at length each of the significant strengths and weaknesses for each proposal considered, and included a detailed narrative description explaining the various aspects of the strengths and weaknesses which make clear why the SSAC concluded that Oracle's proposal was technically superior to either DSG's or Offeror A's proposal. Based on its exhaustive comparative analysis, the SSAC concluded that "the superior technical score, the lower risk rating, and the technical strengths identified by the [SSEB] in the Oracle proposal, justify paying a higher cost for Oracle's proposal," and recommended to the SSA that Oracle be selected for issuance of the BPA. AR exh. 7, SSAC Analysis Report, supra, at 15.

Although the SSA's tradeoff analysis between Oracle's and the two competing vendors' proposals was only minimally explained in the source selection decision itself, based on our review of the SSEB's and SSAC's detailed reports, we conclude that the basis for his selection is reasonable and consistent with the RFQ's evaluation and award scheme. The SSA recognized that Oracle's proposal was rated technically superior

with lower overall risk than either of the competing vendors' proposals. In addition, it is clear that the SSA acknowledged that although Oracle's evaluated TCO was higher than either DSG's or Offeror A's, Oracle's proposal was deemed to present the best overall value to the government. Based on our review of the SSEB's findings which rated Oracle's proposal technically superior, and the SSAC's reports underlying the SSA's selection decision, we find no evidence that the SSA's decision to issue the BPA to Oracle was unreasonable.

Supplemental Protest Issues

In a supplemental protest, DSG maintains that GSA conducted multiple rounds of discussions that improperly favored Oracle. In this regard, DSG contends that during several rounds of discussions, GSA improperly advised Oracle of deficiencies remaining in its proposal which precluded award to that firm. DSG also objects that the multiple roles of the CO as the SSA, a member of the SSEB, and a member of the cost team, compromised the selection decision.

Multiple Rounds of Discussions

DSG contends that GSA improperly conducted several rounds of discussions that favored Oracle. Based on our review of the record, we conclude that there was nothing improper or indicative of bias in the negotiation process. Below, we summarize the chronology leading up to the agency's decision to reopen discussions.

Between June 16 and 21, following the initial evaluation, GSA provided the three vendors with CRs and DRs. Oracle received a total of 37 CRs and 4 DRs; DSG received 76 CRs and no DRs; and Offeror A received a total of 84 CRs and 4 DRs. After receipt of the responses to the CRs and DRs, on or about August 18, GSA provided the three vendors PFNs listing the strengths, weaknesses, and risks the evaluators identified at the factor level, to be addressed during negotiations. Between August 21 and 23, GSA conducted negotiations with DSG, Oracle, and Offeror A, during which the vendors discussed their proposals' weaknesses and risks.

The RFQ specifically permitted vendors to take exception to the RFQ requirements, but required that each exception be related to the specific RFQ section objected to, and that each exception be fully explained and its impact supported. RFQ § L.3.1.10, at L-11. In its proposal, Oracle had taken exception to the entire RFQ, but did not provide the requisite explanation or supporting rationale. During discussions, GSA requested that Oracle identify the appropriate RFQ sections to which it took exception and furnish a narrative explaining its rationale consistent with the RFQ. In its response, on August 28, Oracle provided GSA with 40 exceptions to the RFQ, which, according to the CO, affected all RFQ sections. Renewed discussions with Oracle on August 31 and September 5 resolved all exceptions, but for one related to RFQ § H.15 (related to software maintenance and deductions for maintenance charges). The CO states that it advised Oracle that GSA considered this remaining exception to be a deficiency in its proposal which would preclude issuance of the BPA to the firm if not deleted from its FPR. On September 5, discussions closed, and GSA requested FPRs from all three vendors.

On September 8, GSA received FPRs from all three vendors. The SSEB's evaluation of the FPRs revealed that Oracle had not removed the remaining exception regarding RFQ § H.15 from its FPR and that Oracle's proposal also contained deficiencies related to cost. In addition, the SSEB concluded that adequate discussions had not been conducted with Offeror A or Oracle. At this point in the procurement, only DSG's proposal was considered acceptable.

On September 15, GSA reopened discussions with all three vendors. During this round of discussions,

GSA informed Offeror A that its proposal still contained 1 technical deficiency and 33 weaknesses. The agency also notified Oracle that its proposal contained 3 deficiencies and 6 weaknesses, and informed DSG that its proposal contained 31 weaknesses. GSA then requested, received, and reevaluated FPRs from all three vendors. Evaluation of Oracle's response to this round of discussions revealed that the firm had included language in its FPR which, according to the CO, changed the intent of § H.15, leaving GSA unable to determine whether there would be a related cost impact, and causing the evaluators to consider this uncertainty as a weakness in Oracle's proposal.

On September 27, the SSAC and the CO met to discuss the evaluation of FPRs. The CO states that discussions at that meeting revealed that there were several issues that remained unresolved. In particular, as a result of that meeting, GSA concluded that conflicts and inconsistencies existed between the RFQ and GSA's MAS 70 contracts, and that as a result of those conflicts and inconsistencies, GSA had serious concerns related to the conditions and exceptions to material terms of the RFQ contained in Oracle's and Offeror A's proposals. The agency further explains that although DSG had not specifically taken exception to any part of the RFQ, the conditions and exceptions in Offeror A's and Oracle's proposals reflected defects inherent in the RFQ, which affected all three vendors' schedule contracts. GSA further states that after examining the RFQ and the vendors' schedule contracts, it determined that RFQ § H.15 was in direct conflict with the schedule contracts, and should also be deleted from the RFQ. Consequently, GSA issued amendment No. 8 to the RFQ to remove the apparent inconsistencies.

That amendment specifically explained that its purpose was "to remove conflicts and inconsistencies between the RFQ and the GSA MAS FSC 70 Contracts" by replacing RFQ §§ D, E, F, G, H, and I, in their entirety. AR exh. 1.i, amend. 8, Oct. 18, 2000. A cover letter to that amendment explained the agency's concern, and requested that vendors reference any remaining conflicts in their FPRs. In response to amendment No. 8, Oracle and Offeror A removed all conditions and exceptions remaining in their FPRs.

We have reviewed the record, including GSA's explanations leading up to each round of discussions, and conclude that the record does not support DSG's premise that GSA's actions improperly favored Oracle. Rather, it is clear that following the initial round of discussions, GSA reasonably concluded that adequate discussions had not been conducted with two of the three vendors, and reopening discussions was thus necessary to address the agency's remaining concerns and further maximize the competition. There is nothing improper in requesting more than one round of FPRs where a valid reason exists to do so. See HLJ Management Group, Inc., B-225843-3, Oct. 20, 1988, 88-2 CPD ¶ 375 at 7. 18

Further, DSG's contention that subsequent rounds of discussions favored Oracle is not supported by the record. [8] The record shows that it was not until after the second round of discussions that GSA concluded that several issues remained unresolved, primarily related to defects in the RFQ which affected all three proposals, including DSG's. GSA further concluded that these remaining conflicts and inconsistencies caused two of the three vendors to include conditions and exceptions in their proposals, requiring the agency to amend the RFQ to remove the conflicting terms, and permit issuance of a BPA consistent with the vendors' GSA schedule contracts. Under these circumstances, it was entirely proper for GSA to reopen discussions, and permit Oracle and Offeror A to correct the deficiencies in their proposals which were primarily caused by defects in the RFQ. See, e.g., Biloxi-D'Iberville Press, B-243975-2, Sept. 27, 1991, 91-2 CPD ¶ 301 at 6; see also Carter Chevrolet Agency, Inc., B-228151, Dec. 14, 1987, 87-2 CPD ¶ 584 at 3-4 (decision to conduct discussions was unobjectionable where agency expected offerors to take numerous exceptions to the solicitation and discussions were necessary to resolve these matters). [2] 19 20

Role of the Contracting Officer

DSG alleges that the CO's multiple responsibilities compromised the evaluation process. In this

connection, DSG points out that the CO designated for this procurement also was the SSA, as well as a member of the SSEB and the cost team. As a result, the protester states, the CO approved the source selection plan, conducted discussions, and as the SSA, was ultimately responsible for the selection decision. According to DSG, the CO's involvement in virtually every aspect of the process created an impermissible and prejudicial situation where one individual exercised "significant control" over the entire procurement. Supplemental Comments, Feb. 9, 2001, at 5.

It is neither unusual nor improper for a CO to have multiple responsibilities throughout an acquisition. For example, FAR § 15.303(a) specifically designates the CO as the SSA, unless the agency head appoints another individual, and requires that the SSA perform certain enumerated functions such as establishing an evaluation team; approving the source selection strategy or acquisition plan; ensuring consistency among the solicitation requirements, notices to offerors, and proposal preparation instructions; ensuring that proposals are evaluated solely on the factors contained in the solicitation; considering the recommendations of advisory boards or panels; and selecting the source or sources whose proposal is the best value to the government. FAR § 15.303(b)(1)-(6). The agency states, and the record shows, that the CO simply carried out these responsibilities. While it is conceivable that a CO's active participation in multiple stages of the evaluation process could compromise that process, that clearly is not the case here. The record shows that except for exercising his administrative and oversight functions, the CO did not actively participate in the evaluations, nor provide any information to the cost team, the SSEB, or the SSAC that could have affected the evaluations. DSG's argument that by exercising his responsibilities, the CO impermissibly had such "significant control" over the procurement that it compromised his decision as the SSA, is simply not supported by the record. 21

The protest is denied.

Anthony H. Gamboa

Acting General Counsel

Notes

1. GSA's Financial Management Systems Service Center issued the RFQ and conducted the acquisition for the Peace Corps under GSA's multiple award schedule (MAS) Information Technology Schedule 70.
2. All three vendors submitted substantially identical primary and alternate technical proposals which, except for slight differences not relevant here, did not affect the technical evaluation or risk ratings.
3. These procedures may be found at <<http://pub.fss.gsa.gov/schedules>>.
4. The agency states that it also received completed PRQs from two [DELETED] components, which were considered by the SSEB, but inadvertently destroyed at the conclusion of the evaluation. There is no suggestion in the SSEB or SSAC reports that the ratings in these two PRQs varied materially from those in the other PRQs received; in fact, the protester itself assumes that the responses on these two missing PRQ's would follow a similar pattern of ratings as those contained in the three PRQs in the record. Accordingly, we see no basis to question DSG's past performance rating based on the absence of these two PRQs from the record.
5. We note that the [DELETED] respondent apparently confused the rating categories by inserting the letter "E" (which would indicate unsatisfactory performance), instead of "A" (indicating exceptional performance) for several PRQ items. It is apparent from that respondent's narrative comments, however,

and [DELETED] overall performance rating of DSG as "[DELETED]," that the "E" markings were intended and interpreted to mean exceptional for those items.

6. In support of its argument DSG relies on American Combustion Indus., Inc., B-275057.2, Mar. 5, 1997, 97-1 CPD ¶ 105, where we concluded that the protester should have been given an opportunity to respond during discussions to negative past performance reports to which it had not previously had an opportunity to explain. That conclusion was based on the regulatory requirement of FAR § 15.610(c)(6) then in effect, which was removed from the FAR by the Part 15 rewrite. The new provision is quoted above in relevant part.

7. To the extent that DSG maintains that it was not given an opportunity to explain or provide further information regarding the two marginal ratings, the record shows that during discussions with the protester, GSA provided DSG with a list of numerous weaknesses the SSEB had identified in DSG's proposal, including that "[m]arginal responses were submitted on the [PRQ]." See, e.g., AR exh. 6.c, E-mail Message from the CO to DSG, Aug. 18, 2000; and AR, exh. 6.d, Letter from Contracting Officer's Reopening Discussions with DSG, Sept. 15, 2000, attach. Although GSA did not specifically describe the nature or origin of the two marginal ratings, we think that GSA's e-mail message and subsequent letter provided sufficient notice to at least alert DSG that the evaluators considered the marginal ratings on the PRQ as weaknesses.

8. The protester argues that since DSG had not taken any exceptions to the RFQ in its initial proposal, GSA should not have conducted further discussions. We are aware of no requirement that agencies limit discussions to one round. Rather, the extent of discussions is a matter within the discretion of the contracting agency, and we think that the agency properly used the flexibility inherent in the negotiation process to maximize the competition. CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ 308 at 10 n.4.

9. DSG relies on our decision in Chemonics Int'l, Inc., B-282555, July 23, 1999, 99-2 CPD ¶ 61, to argue that GSA's subsequent discussions were improper. DSG's reliance on that decision, is misplaced. In that case, we sustained the protest because the record showed that the agency had improperly conducted unequal and misleading discussions that favored one offeror over another, contrary to FAR § 15.306(e). As already explained, that is not the case here.