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Decision

Matter of: All Star-Cabaco Enterprise, Joint Venture

File: B-290133; B-290133.2

Date: June 25, 2002

David B. Dempsey, Esq., and Dorothy C. Slovak, Esq., Holland & Knight, for the protester.

Clare A. Kersten, Esq., and Richard G. Welsh, Esq., Naval Facilities Engineering Command, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency evaluation is denied where the overall evaluation reasonably reflected the awardee's proposal's technical superiority, notwithstanding minor errors.
 2. Selection of technically superior, higher-priced proposal is unobjectionable where the solicitation provided that technical considerations were more important than price and the agency reasonably concluded that technical superiority of the awardee's proposal warranted payment of the associated price premium.
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DECISION

All Star-Cabaco Enterprise, Joint Venture (ACE) protests the award of a contract to Brown & Root Services Corporation (BRS) under request for proposals (RFP) No. N68711-00-R-9201, issued by the Naval Facilities Engineering Command, Department of the Navy, to provide base operating support services to include operations, repair and maintenance of the Naval Air Facility (NAF) El Centro, California and other commands. ACE asserts that the agency improperly evaluated the offerors' technical capabilities and failed to follow the "best value" scheme set forth in the RFP.

We deny the protest.

The solicitation, issued on November 28, 2000, contemplated the award of a combination fixed-price/indefinite-quantity contract consisting of an 8-month base period with four 12-month option periods. The requirement is divided into

18 separate fixed-priced "annexes" and separately priced indefinite-delivery/indefinite-quantity (ID/IQ) line items. For example, Annex 17 is for ground support equipment and Annex 18 is for housing maintenance. Offerors were required to submit a lump sum fixed-price for the fixed-price work, such as utilities distribution and transportation. For ID/IQ items, such as plumber, mechanic and carpenter services, the solicitation provided estimated hours, and offerors were instructed to provide a total estimated price and a ceiling price.

The solicitation provided that proposals would be evaluated based on technical capability, past performance, subcontracting efforts, and price. The first three factors were of equal importance and when combined were significantly more important than price. The solicitation further provided that the importance of price would increase if competitive range offerors were considered essentially equal in terms of technical capability, or if a price was so high that it diminished the value of technical superiority to the government. The technical capability evaluation factor consisted of the following equal subfactors: method of operation, staffing, experience, transition plan, and quality control. The solicitation stated that, notwithstanding the relative importance of subfactors, the influence of the subfactors would depend in large measure upon the nature and variation in the differences among proposals received.

The RFP provided that past performance would be evaluated utilizing information from the U.S. Army Corps of Engineers' Contractor Appraisal Support System database, the Department of the Navy's Contractor Performance Assessment Reporting System (CPARS), other customers known to the government, consumer protection organizations, and others who may have useful relevant information. RFP, Factor 2--Past Performance. Offerors were also required to forward past performance questionnaires to identified referenced customers/clients.

With respect to the subcontracting effort evaluation factor, the solicitation provided that "firms identifying the greatest amount of small business subcontracting support beyond the stated recommended goals in all the listed small business categories (SB [small business], SDB [small disadvantage business], WOSB [women-owned small business], HUB Zone [historically underutilized business]) shall be rated to the highest." RFP § M. B, FACTOR 3- Subcontracting Efforts. The solicitation identified the following recommended subcontracting goals compared to the total contract value as follows:

- Small Business: 25%
- Woman-owned Small Business: 5%
- Small Disadvantage Business: 5%
- HUB Zone: 1.5%

Price proposals were to be evaluated for reasonableness and realism. Price proposals were also to be evaluated for the degree of risk assumed by the offerors in

their proposal structure. Offerors were cautioned that unrealistically low (or high) proposed prices might be grounds for eliminating a proposal from the competition, either on the basis that the offeror did not understand the requirement, or because it submitted an unrealistic proposal.

ACE, BRS and four other offerors submitted proposals by the closing time. The technical evaluation team (TET) reviewed the proposals for technical capability and the price evaluation board (PEB) reviewed price proposals. The source selection board (SSB) evaluated past performance and subcontracting efforts. After the initial proposal evaluation, all offerors were rated marginal for technical capabilities and past performance. The agency decided to include all six offerors in the competitive range and held discussions with all six.

Prior to receipt of revised proposals, two offerors requested that they no longer be considered for award. Revised proposals were received on September 10, 2001, and following review of revised proposals, the agency concluded that no further discussions were necessary. The four remaining offerors were asked to submit final revised proposals (FRP) by December 3, 2001. The TEB, SSB, and PEB reviewed the relevant sections of the proposals and reported on their findings. The TEB rated ACE and BRS "highly acceptable" overall under Factor 1, Technical Capability. After reviewing the strengths and weaknesses of the FRP's, the TEB determined that BRS merited the highest ranking of the four proposals, on the basis of the relative value of the strengths of its proposal under certain subfactors, as well as the fact that BRS had no identified weaknesses in its proposal. In support of its conclusion that BRS's proposal should be ranked first, the TEB noted the BRS proposal's "exceptional" rating for the transition plan subfactor and its "highly acceptable" rating for the method of operation subfactor. The SSB, in its evaluation of past performance, also concluded that BRS should be ranked first and ACE ranked second. ACE was ranked lower than BRS overall primarily based on the significant weight of BRS's strengths and the fact that ACE's proposal had a minor weakness concerning the proposed staffing level for Annex 18, housing maintenance.

ACE's final proposed price was \$43,793,108.01; BRS's was \$48,240,7123.12. The PEB evaluated the price proposals and determined that ACE's proposed price was unrealistically low and presented a high risk of understatement of costs. The PEB found that ACE's proposal contained potential cost overruns in both the fixed-price and ID/IQ portions of the contract that would not be covered by its proposed profit margin of [DELETED] percent. The PEB also had concerns with respect to ACE's reported general and administrative (G&A) rate being capped at [DELETED] percent and attempted to verify the rate with the Defense Contract Audit Agency (DCAA). The PEB also found that ACE had proposed unrealistically low prices for several ID/IQ items. The PEB found that ACE had failed to apply any escalation to material costs for option years, and with respect to several annexes, ACE did not account for subcontractors' profits and did not apply its own profit to the proposed subcontractor costs. The PEB concluded that ACE's proposed costs had not been

adequately supported, were unrealistically low, and could not be considered to be fair under certain market conditions. Revised Price Evaluation Board Report at 18. As a result, the PEB found the performance risk presented by ACE's price proposal to be high. Id.

With respect to BRS's price proposal, the PEB found that the fixed prices were fully supported, but the PEB did identify potential cost understatements in some ID/IQ items. Notwithstanding the PEB's determination that pricing of certain ID/IQ portions in BRS's proposal was unreasonably low, the PEB found that BRS's proposed profit was adequate to cover the potential underpricing. Revised Price Evaluation Board Report at 26. Accordingly, the PEB identified a moderate risk of understatement of costs with respect to BRS. Id.

After reviewing the final TEB and PEB reports, the SSB agreed with the findings of both boards. Although ACE provided the lowest overall price and was rated "highly acceptable" overall for the technical factors, the SSB concluded that the proposal submitted by BRS offered the best value to the government. The SSB found that the combined significance of BRS's proposal strengths compared to ACE's proposal was worth the 9 percent price premium. Moreover, the SSB believed that ACE's pricing did not support its offer to the extent that there was considerable risk of not meeting contract requirements for both the fixed price and the ID/IQ portion of work. Post-Negotiation Business Memorandum at 23. The Source Selection Authority (SSA) accepted the board's recommendation and award was made to BRS on March 4, 2002. Following a debriefing, ACE filed this protest with our Office.

The protester initially argued that the agency failed to evaluate properly the offerors' technical capabilities and failed to follow the announced best-value evaluation scheme.¹ In a supplemental protest, the protester raised additional allegations that the agency misevaluated the proposals of ACE and BRS. For example, the protester contends that the agency erred in assigning the same ratings to the offerors for past performance and failed to follow the stated evaluation criteria in its evaluation of the offerors' subcontracting efforts.

Our Office will question an agency's evaluation of proposals only if it lacks a reasonable basis or is inconsistent with applicable statutes or regulations or with the

¹ The protester also argues that the TET and TEB failed to follow the instructions of the source selection plan in evaluating proposals. This protest issue is without merit. Source selection plans provide internal agency guidelines and, as such, do not give parties any rights. Centech Group, Inc., B-278904.4, Apr. 13, 1998, 98-1 CPD ¶ 149 at 7 n.4. It is the evaluation scheme in the RFP, not internal agency documents, such as source selection plans, to which an agency is required to adhere in evaluating proposals and in making the source selection.

stated evaluation criteria. Cobra Techs., Inc., B-280475 et al., Oct. 6, 1998, 98-2 CPD ¶ 98 at 3; DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95 at 4.

ACE contends that the agency inconsistently evaluated the relative value of the strengths of the ACE and BRS technical proposals. For example, ACE points out that it proposed the use of the MAXIMO data collecting system at contract inception, while BRS offered to use MAXIMO within four months of contract commencement; ACE contends that the SSB report provided to the SSA makes no mention of ACE's plan to use MAXIMO immediately. ACE contends that, in contrast, BRS's proposed use of MAXIMO within four months after contract award was considered a major factor that improperly turned the evaluation of technical capability in BRS's favor. ACE argues that if the specifics of ACE's proposal to use MAXIMO had been made available to the SSA, ACE would have been rated technically superior and thus its proposal would have been considered the best value.

Contrary to the protester's contention, both the TEB and the SSB recognized ACE's proposed use of MAXIMO at contract inception as a major strength. Source Selection Board Report, July 23, 2001, at 5 and Technical Evaluation Board Report, Dec. 2001, at 11. The record shows that the agency evaluated ACE's proposed use of MAXIMO at contract inception under the method of operation subfactor. On the other hand, BRS was given a strength for proposing to implement MAXIMO within 4 months of contract award under the transition plan subfactor. ACE appears to be arguing that the outcome of the evaluation may have changed had both offerors been evaluated for their respective use of MAXIMO under both method of operation and transition plan. Our review of the record leads us to conclude that the use of MAXIMO could reasonably be evaluated under either subfactor, and the choices the agency made in this regard appear to have had no impact on the outcome. As previously stated, the record clearly shows that both offerors' proposals were evaluated as having a significant strength for proposing the use of MAXIMO, and we do not find unreasonable the agency's determination that the proposed use of MAXIMO, by both offerors, was of equal value to the agency.²

The protester argues that the agency erroneously assigned the same "highly acceptable" past performance rating to both offerors despite the superiority of ACE's past performance record. ACE's position is based on the fact that it received two "exceptional" and two "very good" ratings under the CPARS (contractor performance assessment rating system), while BRS received three "very good" and one "satisfactory" rating. As explained above, CPARS was only one part of the past performance evaluation. The solicitation stated that past performance information would be gathered from several sources, such as references, customers known to the

² The agency in its report states that the additional time that ACE proposed to utilize MAXIMO was not viewed as so valuable as to warrant a higher adjectival rating, and we have no basis to find that position unreasonable.

government and consumer protection organizations. In fact, the agency received six responses to the past performance questionnaire, of which five rated BRS "outstanding" and one "satisfactory." Revised Source Selection Board Report at 5. Likewise, the agency received six responses for ACE, of which five rated ACE "outstanding" and one "satisfactory." Id. at 8. After a review of both offerors full past performance record, the agency concluded that both offerors overall past performance had been good and that both had a high probability of success and posed negligible risk. On the basis of ACE's and BRS's overall past performance record, we do not find unreasonable the agency's rating both offerors "highly acceptable," nor does the record require rating ACE past performance as "exceptional."

ACE contends that, in accordance with RFP § M, Factor 3-Subcontracting Effort, it should have been rated higher than BRS since it exceeded the RFP subcontracting goals by a higher percentage than BRS. The record shows that both offerors exceeded the RFP small business subcontracting goals. Accepting the calculations provided by ACE, ACE proposed a goal of 29.7 percent and BRS proposed a goal of 27.4 percent. For subcontracting effort, the RFP stated that "[t]hose firms identifying the greatest amount of small business subcontracting support beyond the stated recommended goals in all of the listed small businesses categories (SB, SDB, WOSB, HUB Zone) shall be rated to the highest." RFP, Factor 3-Subcontracting Efforts. Since both offerors exceeded the RFP requirement, the agency rated both proposals "highly acceptable" for subcontracting effort. We have no basis to question this rating, since the difference between the percentage goals proposed was relatively insignificant. Although RFP language is not a model of clarity, it does not require that the firm with the highest goal in excess of the recommended goal must receive a higher rating than assigned to the firm with the next-highest goal.

ACE also challenges the agency's evaluation of its proposal in several areas in which the agency now concedes that its evaluation may have been erroneous but nonetheless maintains that ACE was not prejudiced. For example, ACE contends that its proposed use of a performance manager with 13 years of experience in base operating services (BOS) was unreasonably not evaluated as a strength. ACE notes that BRS was credited with a significant strength for its proposal of key personnel with BOS experience, while it was credited with only a minor strength for its use of a retired Navy Officer with the requisite experience.

While the record shows that ACE's proposal of a performance manager with BOS experience was recognized by the TEB when evaluating ACE's staffing proposal, this fact was not assigned a strength as it was for BRS.³ The agency also concedes that

³ The agency asserts in its report that the individual proposed by ACE was not considered by the evaluators as an added strength because the individual evaluators had first-hand knowledge of the individual's work record and determined that his
(continued...)

ACE should have been credited with a significant or major strength for its housing maintenance experience and concedes that its characterization in the SSA decision that "many" of ACE's strengths did not apply to more than one annex was not accurate since, in fact, only three of the nine strengths now credited to ACE's proposal apply to only one annex.

While the record does show ACE's proposal should have been evaluated as reflecting additional strengths in the above areas, we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Here, the record establishes that, while the protester's and awardee's proposals received the identical overall rating of "highly acceptable," the evaluators reasonably found that the awardee's approach to satisfying the requirement was technically superior to the protester's. In reaching that conclusion, we rely in particular on the contemporaneous narrative, which we view as adding context and depth beyond that represented in the one or two word ratings.

The record shows that the agency evaluated BRS as technically superior because it provided under "method of operation" a detailed explanation of how all RFP requirements would be met and provided for a smooth flow of work in all aspects of the contract to the extent that "risk of unsuccessful performance [was] negligible." BRS also demonstrated an established relationship with local vendors for supplies and services that the agency felt reduced the chance of material delivery delay. BRS proposed key personnel currently working under the BOS contract at NAF El Centro with specific knowledge of what the work entails and established relationships with key government officials. BRS not only had significant BOS experience, but considerable non-BOS military support experience and significant housing maintenance experience. BRS also was rated higher for its transition plan, including a clearly delineated transition with minimal impact to base operation and a proposal to accomplish the transition earlier than required. Moreover, the protester's price was considered to be so unrealistically low that the agency believed it presented a significant performance risk. In view of this record, we consider reasonable the agency's overall evaluation of BRS's proposal as technically superior to ACE's proposal, notwithstanding the failure to identify as a strength ACE's housing maintenance experience under the appropriate subfactor and the overstatement of the number of strengths that applied to only one annex. These evaluation flaws do not invalidate the agency's conclusion that BRS submitted the better technical proposal based on the strengths identified above that are not challenged.

(...continued)

participation as a key employee on the proposed contract did not present a strength. However, the record contains no contemporaneous documentation to support this position.

ACE also objects to the price evaluation on the grounds that ACE and BRS were treated unequally.⁴ Specifically, ACE contends that the agency accepted BRS's exercise of its business judgment relative to BRS's decision to provide ID/IQ pricing below the RFP estimates but did not extend the same treatment to ACE. ACE objects to the SSB's determination that there was "little" risk of unsuccessful contract performance by BRS despite the "moderate" risk assigned by the PEB.

The record shows that the agency had numerous specific concerns about ACE's pricing methodology, some of which were not resolved during discussions. Among other things, the PEB found that ACE underpriced certain ID/IQ items without explanation, and that this underpricing was not understood by the agency even after a thorough investigation. ACE also proposed no escalation on material for the out years and no profit on major subcontracts. Moreover, the PEB concluded that ACE's proposed profit would not cover the understatement of costs. Consequently, the agency determined that ACE's pricing did not support its technical proposal and that the risk of unsuccessful performance was high. We note that ACE does not meaningfully question the agency's underlying findings.

The record provides no basis to conclude that the agency unreasonably determined that ACE's pricing posed a risk of unsuccessful performance. Further, the record indicates that it was ACE's failure to properly document its pricing methodology that generated the different conclusions reached concerning each offeror's ability to perform at its proposed price. While the record shows that BRS also understated certain ID/IQ line items, unlike ACE, BRS reasonably explained its pricing strategy. Further, the PEB concluded that with respect to the questionable ID/IQ items, BRS's proposed profits would cover those understated prices, a determination that the PEB was unable to make with respect to ACE's pricing.

Finally, the protester questions the agency's best value determination and contends that the SSA failed to document his source selection decision. Where, as here, the RFP indicates that technical considerations are more important than price considerations, selection of a technically superior, higher-priced proposal is proper where the agency reasonably concludes that the price premium was justified in light of the proposal's technical superiority. Dynamics Research Corp., B-240809, Dec. 10, 1990, 90-2 CPD ¶ 471 at 2. Further, the source selection decision was properly documented. In the Business Clearance Memorandum, the SSB made a point-by-

⁴ In its supplemental protest filed with its comments to this Office on April 29, 2002, ACE raised several specific issues with respect to the price evaluation, such as the failure of DCAA to perform a proper analysis of ACE's proposal. The agency responded to these issues and the protester's supplemental comments failed to address the agency's responses. As a result, we consider these issues to be abandoned and will not address them. Datum Timing, Div. Of Datum, Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328 at 5.

point comparison of ACE and BRS, and as explained above, concluded that BRS was technically superior and offered the lowest reasonable price. Although ACE's overall price was lower, its low price raised doubt as to its ability to perform the requirements. Federal Acquisition Regulation (FAR) § 15.308 requires that source selection decision be documented and that the documentation include the rationale for any business judgments or tradeoffs made or relied on. Here, the SSA agreed with the SSB recommendation and, while he did not prepare a separate source selection decision document, he endorsed a well-documented source selection decision. FAR §15.308 permits an SSA to use reports and analysis prepared by others, provided the SSA exercises independent judgment in making his decision. We see no basis to question the reasonableness of the award determination.

The protest is denied.

Anthony H. Gamboa
General Counsel