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**Comptroller General
of the United States**

**United States General Accounting Office
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Decision

Matter of: T Square Logistics Services Corporation

File: B-291851

Date: April 15, 2003

Richard B. Oliver, Esq., and Bradley G. Bjelke, Esq., McKenna Long & Aldridge, for the protester.

Nancy M. Camardo, Esq., and Joseph A. Camardo, Jr., Esq., for Sankaty Capital Aviation Services, the intervenor.

Capt. Timothy J. Ryan, and Capt. Peter G. Hartman, Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of the awardee's oral presentation under two subfactors to the technical approach evaluation factor as "blue/excellent in all respects" was unreasonable where the awardee did not address the subfactors during its oral presentation.

DECISION

T Square Logistics Services Corporation protests the award of a contract to Sankaty Capital Aviation Services under request for proposals (RFP) No. DAHA20-02-R-0010, issued by the Air National Guard (ANG), for fuel distribution services at Selfridge ANG Base, Michigan. T Square argues that the agency failed to conduct meaningful discussions with it, and that the agency's evaluation of its and Sankaty's proposals, including oral presentations, and the selection of Sankaty's higher-priced proposal for award, were unreasonable.

We sustain the protest.

The RFP provided for the award of a fixed-price contract for a base period of 8 months with four 1-year options. The successful contractor will "be responsible for the requisitioning, issuing, delivery, accounting and overall management of fuels distribution in direct support of base tenants and transient aircraft at Selfridge [ANG Base]." RFP, Statement of Work (SOW), at 1. To accomplish this, the

contractor will provide all supervision, personnel, materials, supplies, and equipment (with the exception of certain equipment that will be provided by the government).

The RFP stated that award would be made to the offeror whose proposal represented the best value to the government, based upon the evaluation of technical approach, past performance, and price. The RFP provided that “[t]echnical approach is somewhat more important than past performance,” and that technical approach and past performance “are significantly more important than price.” RFP at 22. The solicitation added that the technical approach factor was comprised of the following five equally weighted subfactors: conformance to the SOW, management approach and administrative plan, quality control, phase-in plan, and safety plan. Offerors were also informed that the past performance factor was comprised of the following seven equally weighted subfactors: customer satisfaction, quality of service, timeliness of performance, management effectiveness, cost control, safety, and compliance with small business requirements.

The solicitation’s proposal preparation instructions requested that proposals consist of three parts, with part one providing, among other things, proposed prices; part two providing current and past performance information; and part three addressing technical approach. The RFP specified that the technical approach part of the written proposal was to include only the following: resumes and letters of intent of key personnel (the contract manager and alternate contract manager); organization charts; and on-site staffing plans by shift. The solicitation stated that each offeror would be required to “orally present the technical portion of the proposal.” The RFP provided that oral presentations were to address each of the technical approach evaluation subfactors set forth in the solicitation, and could not exceed 90 minutes in length. Oral presentation slides were required to be submitted to the agency with the technical portion of the written proposals, and the solicitation informed offerors that the use of “[a]dditional handouts will not be permitted.” The solicitation cautioned offerors that “[s]lides submitted but not briefed or portions of the presentation not completed within the time limit will not be considered for evaluation.” RFP at 21.

The agency received proposals from three offerors, including T Square (the incumbent contractor) and Sankaty, by the closing date. Oral presentations were conducted, and immediately following the oral presentations, clarification questions were posed to, and answered by, the offerors. Agency Report (AR) at 5; Tabs 24D and 29D, Clarification Questions. T Square’s proposal/oral presentation was rated under the technical approach factor as “green” overall and its past performance was rated “low risk,” at a price of \$1,717,054.88. Sankaty’s proposal/oral presentation was rated under the technical approach factor as “blue” overall and its past

performance was rated “very low risk,” at a price of \$2,189,217.84.¹ AR, Tab 14, Source Selection Evaluation Board (SSEB) Report, Oct. 22, 2002, attach.

The agency included the proposals of all three offerors in the competitive range, conducted discussions, and requested and received final revised proposals (FRP). T Square’s FRP was rated under the technical approach and past performance factors as, respectively, “green/orange” overall with “moderate risk,” at a price of \$1,939,523.75. Sankaty’s FRP was rated under the technical approach and past performance factors as, respectively, “blue” overall with “very low risk,” at a price of \$2,174,696.84. AR, Tab 16, SSEB Report, Dec. 21, 2002, attach.

In her “best value” analysis, the source selection authority (SSA) noted that T Square’s proposal, “although acceptable and lowest price, is considered to be somewhat of a risk, and . . . identified no significant advantages.” The SSA also stated that “[t]hough [T Square] hold[s] the existing contract and ha[s] performed overall in a satisfactory manner, they have had various problems and were often slow to resolve them.” The SSA noted in this regard that “an extraordinary amount” of government involvement in the administration of T Square’s incumbent contract had been “required due to the effect the problems were having at all . . . levels.” AR, Tab 18, Source Selection Decision, at 6.

In considering Sankaty’s proposal, the SSA noted that although it was “10.8% higher” in price than T Square’s proposal, it “received a blue (or excellent) rating and integrated numerous advantages and contained no disadvantages.” The SSA referred here to the evaluated strengths in Sankaty’s technical approach, and found that Sankaty’s “heavy attention to quality personnel,” as well as Sankaty’s “extraordinary experience and knowledge base,” should save the agency “time and effort” in administering the contract. The SSA concluded that in light of the evaluated advantages in Sankaty’s proposal, it represented the best value to the agency. Id. at 7. This protest followed.²

¹ The possible ratings for the technical approach factor and subfactors were blue--excellent in all respects; green--meets requirements but does not offer any significant advantages; orange--meets some but not all requirements and offers disadvantages that outweigh other advantages; yellow--meets some but not all requirements with errors, omissions, or deficiencies that may be correctable without a major rewrite; and red--unacceptable with major errors that cannot be corrected without a major rewrite. RFP at 27. With regard to past performance, proposals were evaluated as very low risk, low risk, moderate risk, high risk, very high risk, or unknown risk. RFP at 24-25.

² The agency informed T Square of the award on Friday, January 3, 2003, and T Square requested a debriefing on Wednesday, January 8. The agency declined the protester’s request for a debriefing because it was not filed within 3 days after T Square was notified of the award. See Federal Acquisition Regulation (FAR)

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The protester argues that the agency's evaluation of Sankaty's proposal/oral presentation as "blue" under the phase-in plan and safety plan evaluation subfactors, and "blue" overall under the technical approach factor, lacked a reasonable basis. The protester points out here that Sankaty failed to separately address the phase-in plan and safety plan subfactors during its oral presentation as required, and that the agency was precluded from considering Sankaty's phase-in plan and safety plan oral presentation slides in its evaluation given the solicitation provision (at 21) that "[s]lides submitted but not briefed or portions of the presentation not completed within the time limit will not be considered for evaluation."

In reviewing an agency's evaluation of proposals, we will not reevaluate the proposals, but instead, will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation factors and applicable statutes and regulations. Servizi Aeroportuali, Srl, B-290863, Oct. 15, 2002, 2002 CPD ¶ 208 at 11.

The RFP requested that each offeror "[d]iscuss in detail your phase-in plan required in accordance with the (SOW)." The solicitation advised offerors here that their "[d]iscussion should address as a minimum; staffing, management, orientation, equipment and addressing Quality Control procedures that will be utilized during Phase-In." RFP at 22. The SOW stated with regard to the phase-in plan:

[T]he services provided by this contract are vital to the government's overall effort, [and the] continuity thereof must be maintained at a consistently high level without interruption. To ensure a smooth transition in the change of work effort, the contractor shall develop a Plan. The contractor's Plan shall describe in detail the transition

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§ 15.506(a). On January 10, T Square filed this protest with our Office. The agency argues that T Square's protest should be dismissed for "failing to state legally and factually sufficient ground for protest," as required by our Bid Protest Regulations. See 4 C.F.R. § 21.1(c)(4) (2003). The agency does not argue that T Square's initial protest is overly general, but rather appears to argue that because T Square did not obtain a required debriefing, it should not be permitted to pursue a protest challenging the agency's evaluation and source selection, and obtain information through the bid protest process that it could have obtained through a debriefing. We disagree. The agency seeks to make the receipt of a required debriefing a prerequisite to filing and pursuing a protest. There is no such requirement. Trifax Corp., B-279561, June 29, 1998, 98-2 CPD ¶ 24 at 5. T Square's initial protest, even without receiving any debriefing, was legally sufficient and its supplemental protest grounds were timely filed based on information contained in the agency report. We therefore decline to dismiss T Square's protest.

between outgoing and incoming contractors and how responsibility for services changes over without interruption.

RFP SOW § 4.18.

Sankaty's oral presentation was organized in a manner consistent with the terms of the RFP, that is, it consisted of five sections, each addressing one of the equally-weighted technical approach subfactors set forth in the solicitation. AR, Tab 24C, Sankaty's Technical Presentation, app. E, Oral Presentation Slides. The record, which includes a videotape of Sankaty's oral presentation as well as Sankaty's oral presentation slides, reflects that Sankaty intended to address the subfactors comprising the technical approach factor in an order similar to the order in which they appeared in the solicitation, with the phase-in plan and safety plan evaluation subfactors being the last two addressed.³ The videotape recording of Sankaty's oral presentation shows that approximately 15 seconds into Sankaty's presentation of its safety plan (and prior to its presentation of its phase-in plan), the 90 minutes allotted for the oral presentation elapsed, and the agency, in accordance with the solicitation instructions, stopped Sankaty's oral presentation at that time.

The agency explains that it did not consider Sankaty's safety and phase-in plan presentation slides in evaluating Sankaty's oral presentation. Rather, the agency asserts that the evaluators "relied on their handwritten notes taken during the presentation to arrive at their individual and ultimate consensus decision of 'Blue' ratings in both of these subfactors." Agency Supplemental Report at 6. The agency argues here that, in its view, "Sankaty's oral presentation illustrates a comprehensive and desirable phase-in plan with details regarding those requirements and additional details on transition, continuity, drug testing, training, and obtaining commercial drivers licenses." The agency also asserts that there were other aspects of Sankaty's oral presentation that justified a "blue" rating under the phase-in plan subfactor, including "an aggressive drug-testing program, a 90-day probationary period, a strong training program, aggressive screening and recruiting programs and their assurance of smooth transition." Contracting Officer's Supplemental Statement at 1.

Based upon our review of the record, we agree with the agency that Sankaty, while addressing the management approach and administrative plan subfactor, also addressed the staffing and management aspects of its phase-in plan, including its

³ The solicitation listed the phase-in and safety plans subfactors as, respectively, the fourth and fifth subfactors, while Sankaty's oral presentation slides reflect that Sankaty intended to address the safety plan subfactor fourth (four slides) and the phase-in plan subfactor fifth (six slides). See RFP at 25; AR, Tab 24C, Sankaty's Technical Presentation, app. E, Oral Presentation Slides.

plan to evaluate, hire, drug test and train personnel (including the incumbent workforce). However, the record does not support the agency's assertion that Sankaty, during its oral presentation, addressed the orientation or equipment aspects of its phase-in plan, or the quality control procedures that will be utilized during phase-in, as was required by the RFP.

It is also unclear how the evaluators were able to rely on their "handwritten notes" in determining that Sankaty's proposal warranted a rating of "blue/excellent" under the phase-in plan subfactor. In this regard, one evaluator's worksheet has no notes under the phase-in plan subfactor, and another evaluator's worksheet has a question mark next to the space for phase-in plan comments and notes only that Sankaty proposed a "30 day phase in." A third evaluator's worksheet provides a comment of only "no interruption." AR, Tab 8A, Evaluation Worksheets.

The remaining evaluator's worksheet includes the most detailed notes regarding that evaluator's view of Sankaty's phase-in plan. Specifically, this evaluator, consistent with our view that Sankaty's oral presentation did address some aspects of its approach related to phase-in during its discussion of staffing under the management approach and administrative plan subfactor, comments (in rating Sankaty as "green" under the phase-in subfactor) to "refer back to staffing--did state a strong gear up plan." The only other comment on this evaluator's worksheet regarding this subfactor notes that Sankaty stated during its oral presentation that it "would provide a truck." Id.

With regard to the safety plan subfactor, the RFP requested that each offeror in its oral presentation "[d]iscuss in detail your proposed safety plan as required by the SOW." The solicitation added here that "[i]n addition to the Safety plan overview, as a minimum, discuss the following elements: Hazard and mishap notification procedures; Mishap investigation; Mishap prevention procedures." RFP at 22. The SOW specified that the safety plan "shall include safety prevention procedures and will identify the contractors' methods of identifying and reporting all safety hazards and mishaps involving Government facilities and equipment," and provided relatively detailed requirements regarding mishap reporting and investigation. SOW §§ 4.17.1, 4.17.1.1.

The agency makes a similar argument regarding its evaluation of Sankaty's oral presentation as "blue/excellent" under the safety plan evaluation factor. That is, while again conceding that Sankaty's 90-minute oral presentation time elapsed prior to its reaching the safety plan section of its oral presentation, the agency nevertheless argues that Sankaty "address[ed] all of the required safety factors" while presenting its approach to the conformance to the SOW, management approach and administrative plan, and quality control subfactors. Contracting Officer's Supplemental Statement at 2.

Although we agree with the agency that Sankaty in its oral presentation, while discussing other subfactors, addressed certain elements relating to safety, the record does not support the agency's assertion that Sankaty presented its safety plan, or its approach to mishap investigation, as was required by the RFP.⁴ In this regard, we, like the protester, are unable to find any mention of mishap investigation in Sankaty's oral presentation; nor is mishap investigation referenced in any manner on any of the evaluators' worksheets. See Agency Report, Tab 8A, Evaluator Worksheets.

In sum, we cannot find reasonable the agency's evaluation of Sankaty's proposal/oral presentation as "blue/excellent in all respects" under the phase-in plan and safety plan evaluation subfactors, and thus "blue/excellent in all respects" overall, where the record demonstrates that Sankaty did not specifically address either of these subfactors during its oral presentation, and did not adequately address the requirements of these subfactors while presenting its response to the conformance to the SOW, management approach and administrative plan, or quality control subfactors.⁵ Given that Sankaty's higher-priced proposal was selected as the best value to the agency in part because of its higher overall technical rating of "blue/excellent in all respects," the agency's selection lacks a reasonable basis. We sustain T Square's protest on these bases.

We recommend that the agency reopen discussions with all offerors whose proposals are in the competitive range,⁶ and request and evaluate revised FRPs.⁷ If

⁴ While Sankaty's oral presentation did not specifically mention mishap prevention procedures, it did discuss its "proactive" approach to safety.

⁵ We also note that these two subfactors were not part of the post-oral-presentation clarifications with Sankaty nor were they mentioned in the formal discussions with that firm.

⁶ Had the agency properly evaluated Sankaty's proposal/oral presentation, the apparent weaknesses and deficiencies in Sankaty's proposal/oral presentation with regard to its phase-in and safety plans (that it did not present) should have been raised with Sankaty during discussions. However, as noted, these matters were not the subject of discussions. Because the discussions recommended here are for the purpose of allowing Sankaty to supplement its proposal, discussions should not be restricted and T Square should be given an opportunity to revise its proposal.

⁷ In view of this recommendation, we need not address T Square's protest that the agency's evaluation of proposals under the past performance and technical approach factors was unreasonable. Nor need we address T Square's argument that the agency should have raised during discussions with T Square certain adverse information regarding T Square's performance of the current contract, to which T Square asserts it has not had an opportunity to respond. However, given the lack
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an offeror other than Sankaty is selected for award, the agency should terminate the contract previously awarded to that firm. We also recommend that the agency reimburse the protester for the cost of filing and pursuing this protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d). The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

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of clarity in the record regarding this latter issue, and our recommendation, we believe it would be prudent for the agency to raise with T Square during discussions the adverse past performance information regarding T Square's performance of the current contract.