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**Comptroller General
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Decision

Matter of: Burns and Roe Services Corporation

File: B-296355

Date: July 27, 2005

Kenneth B. Weckstein, Esq., and Constance A. Wilkinson, Esq., Epstein Becker & Green, PC, for the protester.

William A. Roberts III, Esq., Richard B. O’Keeffe, Jr., Esq., and Joseph E. Ashman, Esq., Wiley Rein & Fielding LLP, for Del-Jen International Corporation, an intervenor.

Richard G. Welsh, Esq., Ken Wilson, Esq., and Robert E. Little, Jr., 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

Protest that agency’s evaluation and source selection decision were flawed is denied where the record shows that the agency’s evaluation and source selection decision were reasonable and consistent with the solicitation’s evaluation factors.

DECISION

Burns and Roe Services Corporation (BRSC) protests the award of a contract to Del-Jen International Corporation (DJIC) under request for proposals (RFP) No. N62470-03-R-4200, issued by the Department of the Navy for base support services for the United States Naval Base at Guantanamo Bay, Cuba. BRSC primarily objects to the agency’s technical evaluation of the BRSC and DJIC proposals and maintains that the agency failed to perform a proper price realism analysis of DJIC’s proposal.

We deny the protest.

BACKGROUND

The solicitation was issued on August 11, 2004 for the award of a combination fixed-price/indefinite-quantity award fee contract for a base year with four 1-year option periods. The contractor is to provide all labor, supervision, tools, materials, equipment and transportation necessary to provide base support services.

The RFP provided that the award would be made on the basis of the proposal determined to represent the best value to the government. The RFP stated that technical proposals would be evaluated to determine whether the offeror possessed the capability to successfully perform the requirements, and listed four equally weighted technical evaluation factors--past performance, corporate experience, management and project staffing, and technical approach/method. RFP § M.2. The RFP provided that the technical factors combined were approximately equal to price/cost. Id. Offerors were further advised that price proposals would be evaluated to determine reasonableness and realism of price, as well as to determine whether the proposed pricing demonstrated an understanding of the work and an ability to perform the contract. The RFP stated that the agency would consider the results of any or all of the following types of analysis in evaluating price: comparison of proposed prices received in response to the solicitation, comparison of proposed prices with independent government estimates, comparison of proposed prices with available historical information, and information/reports obtained from other agencies. Id.

The agency received five proposals by the closing date. The technical evaluation board (TEB) evaluated the technical proposals and a price evaluation board (PEB) evaluated the price proposals. As a result of the initial evaluation by the TEB, BRSC's technical proposal was ranked first and DJIC's was ranked third. Agency Report (AR), Tab 7, Technical Evaluation Board Report at 8. BRSC was ranked first based on ratings of very good under the past performance, management and project staffing, and technical approach/method factors, and satisfactory under the corporate experience factor, resulting in a very good overall technical rating and a low overall risk rating. DJIC was ranked third based on ratings of very good under the past performance and management and project staffing factors, and satisfactory under the corporate experience and technical approach/method factors, resulting in a satisfactory overall technical rating and a moderate overall risk rating.

The source selection board (SSB), after reviewing the TEB report, PEB report and all proposals, agreed with the TEB evaluations with the exception of the rating under the corporate experience factor for DJIC. The TEB rated DJIC satisfactory for corporate experience because in its view, DJIC's proposal did not indicate refuse collection experience required under the RFP. Id. at 10. The SSB rated DJIC very good for corporate experience because the SSB determined that the information provided by DJIC under the past performance factor, should also be considered under the corporate experience factor, even though it was not specifically furnished under that factor, since the past performance information also identified DJIC's experience. AR, Tab 10, SSB Memo to Source Selection Authority (SSA), at 2. As a result of the SSB's rating for DJIC under corporate experience, DJIC's overall technical rating increased to very good and the risk factor was now evaluated as low risk.

The SSB recommended that only the proposals of BRSC and DJIC be included in the competitive range. Id. at 3. The SSA subsequently determined that the competitive range should consist of the four proposals rated satisfactory or higher. AR, Tab 11, Amended SSB Report.

Discussions were held with all competitive range offerors and revised proposals were received on February 18, 2005. The results of the evaluation of the revised proposals by the TEB and PEB were as follows:

Evaluation Factors	DJIC	BRSC
Past Performance	Very Good	Very Good
Corporate Experience	Very Good	Satisfactory
Management & Staffing	Very Good	Very Good
Technical Approach	Satisfactory	Exceptional
Overall Rating	Satisfactory	Very Good
Risk Rating	Moderate	Low
Price	\$41,927,813	#[DELETED]

AR, Tabs 16 and 17.

The SSB reviewed the ratings of the TEB and PEB and again made adjustments to the technical ratings. Specifically, with respect to DJIC, under the technical approach/method evaluation factor, the SSB rated DJIC's proposal as very good based on its determination that the TEB had concluded incorrectly and without support that DJIC's proposed staffing was inadequate to perform some of the work and that DJIC had not explained its proposed staffing efficiencies based on the [DELETED]. The SSB found that DJIC had increased its staffing in response to the discussion questions. The SSB also found that DJIC's revised proposal addressed DJIC's approach to obtaining staffing efficiencies through the [DELETED]. In addition, contrary to the TEB's view, the SSB found that DJIC had clearly defined the indefinite- delivery/indefinite-quantity (IDIQ) process to be used under this contract. As a result, the SSB increased DJIC's rating for the technical approach/method factor to very good, changed DJIC's risk rating from moderate to low and increased its overall technical rating from satisfactory to very good. AR, Tab 18, SSB Report, at 2.

With respect to BRSC, for the corporate experience evaluation factor, the SSB disagreed with the TEB conclusion that BRSC had no relevant experience with providing base support vehicles and equipment services, and changed BRSC's rating from satisfactory to very good. The SSB concluded that BRSC currently maintains all vehicles and equipment under various current contracts, and determined that this

work is similar to the vehicles and equipment functions required by this solicitation. The SSB also changed the rating for BRSC under the technical approach factor from exceptional to very good. The SSB did not agree that the three significant strengths identified by the TEB were enough to substantiate an exceptional rating for BRSC under the technical approach/method factor. In the SSB's opinion, the strengths, such as the proposed [DELETED] and the proposal to [DELETED], did not provide any significant benefit to the Navy. Id. at 3.

The SSB determined that DJIC's price proposal, although \$[DELETED] lower than BRSC's total price, was fair and reasonable based on a comparison to BRSC's price proposal. The SSB concluded that differences in technical approach accounted for approximately \$[DELETED] which indicated that "the proposals are within \$[DELETED] [million], or less than [DELETED] of each other." AR, Tab 18, SSB Report at 4. Since the other two competitive range offerors were significantly higher priced than either DJIC or BRSC, the SSB recommended that those two proposals not be further considered for award. The SSB determined that the DJIC's and BRSC's proposals, which each received very good ratings for each of the four technical factors, were technically equal. Based on DJIC's low cost, the SSB recommended award to DJIC because its proposal represented the best value to the Government. Id. at 5. The SSA agreed with the SSB, concluding that DJIC and BRSC "are technically rated equal with a very good rating" and that "[BRSC's] proposal offers no added value to the Government to justify the additional \$[DELETED]." AR, Tab 19, Business Clearance Memorandum, at 11. Award was made to DJIC on April 12, 2005. After receiving a debriefing, BRSC filed this protest with our Office on April 28, 2005.

ISSUES AND ANALYSIS

The protester alleges that the agency misevaluated the BRSC and DJIC proposals. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation only to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. See MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

Evaluation of DJIC's Proposal

The protester maintains that the agency improperly gave DJIC credit for remote overseas experience under the past performance and corporate experience factor, because the only DJIC overseas contract experience was in Alaska and Hawaii, locations which are not comparable to the "hostile environment" in Cuba. Protester's Comments to Agency Report at 7.

The RFP, however, did not require offerors to have past performance or corporate experience at remote, hostile or overseas locations. Under the past performance and corporate experience evaluation factors, offerors were to identify each contract performed during the past 3 years which were “similar in complexity (i.e., type of work, size (contracts in excess of \$5,000,000 per year) and volume) as required by this solicitation.” RFP ¶ L.9.c.¹ The TEB rated DJIC’s revised proposal very good for the past performance and corporate experience factors based on its determination that DJIC provided references of past performance on contracts that were similar in scope, size, and complexity to the current requirement, and for which it received ratings justifying a very good rating. While the protester disagrees with these ratings, the record shows that they were reasonable and consistent with the solicitation.

The protester next challenges the SSB’s decision to increase DJIC’s ratings. The protester argues that even after revised proposals were submitted, the TEB still had concerns about DJIC’s overall staffing and assigned DJIC’s proposal a satisfactory rating for technical approach/method, and that the SSB’s revision of this rating to very good based on DJIC’s discussion in its revised proposal was unreasonable.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results, subject only to the tests of rationality and consistency with the evaluation criteria. KPMG Consulting LPP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13. Here, as explained below, the SSB’s decision to revise upward DJIC’s ratings under the technical approach/method factor, and the overall technical and risk ratings, in our view, was reasonable, supported by the record, and consistent with the evaluation criteria.

The SSB reports that it conducted an in-depth review of the revised TEB and PEB evaluations, offerors’ responses to discussion questions, and the offerors’ revised

¹ To the extent the protester is alleging that the agency should have specifically required experience and past performance in hostile, remote overseas locations, the objection is untimely. A protest based upon alleged improprieties in a solicitation apparent prior to the time set for receipt of proposals and filed after award, as in this case, is untimely, and will not be considered. Bid Protest Regulation, 4 C.F.R. § 21.2(a)(1) (2005).

The protester also argues that the source selection plan (SSP) somehow required the Navy to give more weight to experience at hostile overseas locations or at Guantanamo Bay specifically, we note that the SSP is an internal agency guide that does not give the parties any rights. It is the evaluation scheme in the RFP, not internal agency documents such as the SSP, to which an agency is required to adhere in evaluating proposals and making the award selection. Islandwide Landscaping, Inc., B-293018, Dec. 24, 2003, 2004 CPD ¶ 9 at 4.

proposals. With respect to DJIC, the SSB agreed with the TEB with respect to the first three evaluation factors. However, as previously stated, with respect to the technical approach/method factor, the SSB found the TEB concerns about inadequate staffing to be unsupported. The SSB found that DJIC had increased reasonably its staffing in the areas of concern identified during discussions. The SSB also noted that DJIC, in various parts of its revised proposal, specifically discussed the proposed efficiencies gained through [DELETED] . The SSB also found that DJIC had clearly addressed another discussion question regarding the IDIQ process which the TEB had failed to note. Thus, based on its review of DJIC's proposal, the SSB concluded that DJIC'S proposal rated a very good for technical approach/method factor.

Since DJIC's proposal received a very good rating for all of the technical evaluation factors, the SSB concluded that DJIC's proposal deserved an overall rating of very good. Further, given its conclusion that the staffing had been satisfactorily addressed by DJIC, the SSB changed DJIC's risk rating from moderate to low.² We think the SSB reasonably could come to a different conclusion than the TEB as to the substance of DJIC's discussion responses, especially where, as here, the TEB's concerns were not well-documented. In our view, based on the record, the SSB's evaluation here of DJIC's proposal was unobjectionable.

Technical Evaluation of BRSC

The protester argues that the Navy did not give it appropriate credit for its experience at Guantanamo Bay. The protester acknowledges that the SSB increased its ratings under corporate experience from satisfactory to very good based on its experience in base support vehicles and maintenance at Guantanamo Bay, but maintains that this was not the only factor under which its experience at Guantanamo Bay should have been recognized. As previously stated, the RFP did not require that offerors have specific experience at Guantanamo Bay, rather, the RFP required offerors to demonstrate experience providing the specific services required by the RFP. Here, BRSC received credit for its experience at Guantanamo Bay under the corporate experience factor. The protester argues that the agency

² The protester also argues that the agency improperly considered the experience of DJIC's proposed project manager to justify the increase in DJIC's rating under DJIC's technical approach/method factor from satisfactory to very good. The protester maintains that the experience of proposed personnel is not a part of the offeror's technical approach. Contrary to the protester's argument, the record shows that experience of DJIC's project manager was discussed under the evaluation of the management and project staffing evaluation factor. AR, Tab 18, SSB Report, at 2. As stated above, the SSB increased DJIC's technical approach rating based on its determination that DJIC provided the staffing necessary to successfully perform the requirement.

should have considered the importance of its experience at Guantanamo Bay under the technical approach/method factor. However, the RFP did not provide for consideration of experience at Guantanamo Bay under the technical approach/method factor.

The protester also objects to the SSB's downgrading of its rating for the technical approach/method factor from exceptional to very good. The SSB found that the TEB justified the exceptional rating on the basis of BRSC's proposal having three significant strengths and no weaknesses. However, the SSB concluded that the three particular significant strengths did not offer sufficient value to the government to justify an exceptional rating. The protester nevertheless maintains that even after eliminating the three significant strengths identified by the TEB, it still had 10 strengths and no weaknesses and that therefore its proposal still deserved an exceptional rating. Based on our review of the record, we have no basis to object to the SSA's analysis that the significant strengths identified by the TEB did not justify an exceptional rating, and the SSA's view that, absent any significant strengths, the 10 strengths equated to a very good rating. In sum, we have no basis to question the evaluation of BRSC under the technical approach/method evaluation factor and, therefore, we have no basis to conclude that BRSC's very good rating under this factor was unreasonable.

Price Evaluation

BRSC's primary complaint is that the agency did not reasonably evaluate the DJIC price proposal for price realism. In a fixed-price contract, an agency may provide, as here, for the use of a price realism analysis in a solicitation for such purposes as measuring an offeror's understanding of the solicitation's requirements and for assessing the risk inherent in an offeror's proposal. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. The Federal Acquisition Regulation (FAR) provides a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including comparison of the prices received with each other; comparison of previously proposed prices for the same or similar items; comparison with the independent government estimate; and analysis of pricing information provided by the offeror. FAR § 15.404-1(b)(2). The nature and extent of an agency's price realism analysis ultimately are matters within the sound exercise of the agency's discretion, unless the agency commits itself to a particular methodology in a solicitation. Id.

Here, section M of the RFP stated that the agency would evaluate price proposals to determine reasonableness and realism as well as whether proposed pricing demonstrates an understanding of the work and an ability to perform the contract. RFP M.2. Section M simply repeated the types of price analysis techniques identified in the FAR.

The record shows that the agency evaluated the realism of an offeror's price proposal by comparing prices against one another and the independent government estimate, reviewing each offeror's cost proposal for compliance with the terms of the solicitation, for mathematical accuracy, and comparing pricing data with the technical proposal. AR, Tab 17, PEB Report. Moreover, recognizing DJIC's significantly lower price when compared with the protester's prices, the SSB specifically made a detailed comparison of the price proposals of DJIC and BRSC, and concluded that DJIC's price was fair or realistic and reasonable in comparison to BRSC's. As explained above, the SSB found several areas where DJIC's and BRSC's differences in technical approach accounted for approximately \$[DELETED] of the difference in proposed prices, which explained a significant amount of the price difference. For example, the SSB found that DJIC proposed [DELETED], while BRSC did include these costs, that DJIC proposed [DELETED], that DJIC proposed [DELETED], and that DJIC proposed [DELETED]. In our view, the agency reasonably satisfied its obligation under the FAR and the RFP to perform a price realism evaluation and BRSC's mere disagreement with how the agency conducted its price realism analysis for these requirements and the agency's ultimate conclusion that DJIC's prices were realistic does not establish that the agency's evaluation of the realism of proposed prices was unreasonable. Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 8 n.8.

Best Value Analysis

The protester argues that the agency's best value determination was flawed because it failed to look beyond the adjectival ratings assigned the DJIC and BRSC proposals and failed to acknowledge the additional value of BRSC's proposal, such as the benefit of new equipment and its proposed savings in repair costs.

While the agency evaluators did use adjectival ratings in assessing offerors' proposals, the record shows that the agency's ratings and conclusions were based on detailed narrative technical evaluations of the proposals, and a detailed price evaluation report. We think the record contains adequate support for the SSA's conclusion that the BRSC and DJIC proposals were technically equal and therefore the record supports the award to DJIC on the basis of its low price.

The protest is denied.

Anthony H. Gamboa
General Counsel