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Decision

Matter of: Aegis Defense Services, LLC

File: B-404918; B-404918.2

Date: June 28, 2011

Jonathan D. Shaffer, Esq., Edmund M. Amorosi, Esq., Mary Pat Buckenmeyer, Esq., and M. Clay Hamrick, Esq., Smith Pachter McWhorter PLC, for the protester.

David S. Black, Esq., Richard O. Duvall, Esq., Jacob W. Scott, Esq., and Oliya S. Zamaray, Esq., Holland & Knight LLP, for Global Integrated Security (USA), Inc., the intervenor.

Kathleen D. Martin, Esq., Department of State, for the agency.

Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency's best value decision that fails to consider the evaluated technical differences in the firms' proposals is not reasonable.

DECISION

Aegis Defense Services, LLC, of Arlington, Virginia, protests the issuance of a task order to Global Integrated Security (USA), Inc., of Reston, Virginia, under task order request for proposals (TORP) No. 2011-0006, issued by the Department of State for protective services in Basrah, Iraq. Aegis challenges the agency's evaluation of technical proposals and source selection decision.

We sustain the protest.

BACKGROUND

The State Department's Bureau of Diplomatic Security provides protective services for high-level U.S. officials, certain designated foreign leaders, and diplomatic facilities around the world. To satisfy these requirements, the agency established multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contracts for worldwide protective services to eight firms, including Aegis and Global.

Under the TORP here, the ID/IQ contract holders were invited to compete for a task order for protective security services supporting the diplomatic consulate in Basrah for a base year and four option years. TORP, Statement of Work (SOW) § 4.0, at 6. Offerors were informed that the task order contractor would provide personal protective services, logistical support, medical support, and guard services for U.S. embassy personnel, personnel supporting the U.S. Agency for International Development, and other personnel under U.S. Chief of Mission authority. *Id.* § 6.0, at 8. In addition, the contractor would provide, under separate funding, personal protective and support services for the International Narcotics and Law Enforcement-Iraq Police Development Program. *Id.*

Offerors were informed that a single task order would be issued on a best value basis, considering the following evaluation factors and subfactors:

Technical Approach	
	Program and logistics management
	Mobilization management
	Personnel staffing
	Training
	Risk management and mitigation
Past Performance	
Price	

TORP at 19-20. The technical approach factor was stated to be more important than the past performance factor, and the non-price evaluation factors, combined, were stated to be significantly more important than price.¹ *Id.* at 18.

¹ The TORP did not state the relative importance of the technical approach subfactors, and therefore offerors were on notice that the subfactors would be accorded equal weight.

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The TORP provided narrative descriptions for each of the evaluation factors and subfactors. Proposal preparation instructions were also provided. With respect to the past performance factor, the TORP provided that the agency would evaluate the relevance and currency of the offeror's past performance to assess the offeror's capability to satisfy the task order requirements. Id. at 20. In this regard, offerors were instructed to identify three past performance references, from which the agency could obtain information regarding the offerors' experience/ability with projects of similar size and scope of work that were performed within the last 3 years. Id. at 18. The TORP also stated that the agency might use past performance information obtained from sources other than those identified by the offerors. Id. at 20.

State received proposals from all eight ID/IQ contract holders, which were evaluated by the agency's technical evaluation panel (TEP). The TEP assigned adjectival and color ratings supported by narrative discussions that identified the offerors' respective strengths and weaknesses under each of the technical approach subfactors and under the past performance factor. Aegis's and Global's proposals were evaluated by the TEP, as follows:²

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See Dismas Charities, Inc., B-292091, June 25, 2003, 2003 CPD ¶ 125 at 4 n.8.

² The agency's source selection plan (SSP) defined a blue/excellent rating as reflecting an approach that met or exceeded the solicitation requirements and offered one or more strengths and few or no weaknesses. A green/good rating was defined as an approach that met the solicitation requirements, where the offeror will most likely be able to perform successfully, though minor weaknesses may exist that have minimal potential to cause disruption in timely performance. A yellow/marginal rating was defined as an approach that demonstrates satisfactory understanding of the basic minimum requirements of the TORP, with one or more correctable weaknesses. Agency Report (AR), Tab 9, SSP, at 13.

		Aegis	Global	
TECHNICAL APPROACH		GREEN/GOOD	GREEN/GOOD	
	Program and logistics management	Green/Good	Yellow/Marginal	
		4 strengths	3 strengths	
		2 weaknesses	6 weaknesses	
	Mobilization management	Blue/Excellent	Green/Good	
		4 strengths	4 strengths	
		1 weakness	2 minor weaknesses	
	Personnel staffing	Blue/Excellent	Green/Good	
		4 strengths	1 strength	
		1 weakness	No weakness	
	Training	Yellow/Marginal	Yellow/Marginal	
		1 strength	1 strength	
		1 significant weakness	1 significant weakness	
		2 weaknesses	3 weaknesses	
	Risk Management and mitigation	Yellow/Marginal	Green/Good	
		No strengths	1 strength	
		1 weakness	1 minor weakness	
	PAST PERFORMANCE		BLUE/EXCELLENT	BLUE/EXCELLENT
			5 strengths	2 strengths

See, AR, Tab 4, TEP Chair Report, at 5; Tabs 5 and 6, TEP Consensus Evaluation Reports for Aegis and Global.

With respect to the technical approach factor, the TEP's differing subfactor ratings reflected the panel's finding that Aegis and Global offered unique approaches with varying strengths. See Hearing Transcript (Tr.) at 55.³ In this regard, the TEP chair testified that the panel reserved the

³ Because the contemporaneous record provided insufficient support for the agency's ultimate conclusion in its selection decision that the proposals of Aegis and Global were essentially technically equal, we conducted a hearing to receive testimony from the TEP chair, the contracting officer (CO), and the source selection authority (SSA).

blue/excellent rating for proposed approaches that "actually exceeded the contract requirements." Id. at 14.

Thus, the TEP assigned Aegis's proposal blue/excellent ratings under the mobilization management and personnel staffing subfactors, because the panel found that Aegis had offered to exceed the TORP requirements or otherwise offered added value to the agency. Id. at 22-23. In contrast, the TEP's assignment of green/good ratings, such as Global's proposal received under the mobilization management and personnel staffing subfactors, reflected the panel's view that the offeror's proposal only met the contract requirements, rather than exceeded them. See Tr. at 21. Although the TEP assigned a number of strengths in Global's proposal under the subfactors, these strengths were not all viewed as exceeding the solicitation requirements, and with regard to Global's proposal did not indicate that the firm's approach under any of the subfactors exceeded the solicitation requirements.⁴

With respect to the past performance factor, the TEP found both firms' past performance to be blue/excellent. The TEP stated that it determined what past performance was relevant "based on contracts that were performed in austere, high threat environments and involved operations similar in size, scope, or complexity to [this task order]." See AR, Tab 5, TEP Consensus Evaluation of Aegis Proposal, at 8. The TEP relied upon "contractor-provided references, past performance information derived from the Past Performance Information Retrieval System (PPIRS), and the Department of State (DOS) evaluations and questionnaires." Id.

With respect to Aegis's past performance, the TEP noted that Aegis had identified three past performance references for work valued between \$15.7 million and \$520 million, all of whom responded to the agency's questionnaires. The TEP also reviewed other past performance information, from which the

⁴ The TEP chair testified that the TEP's assignment of strengths might reflect features that only met the solicitation requirements rather than exceeded them. Tr. at 21. The TEP chair noted, however, that the TEP in most cases identified in its narrative where a strength exceeded the solicitation requirements. Id. at 34.

TEP identified two other projects, valued at \$7 million and \$200 million, that the TEP considered relevant. All of the past performance information considered by the agency indicated that Aegis's performance was excellent and that the references would again contract with Aegis, given the opportunity. AR, Tab 5, TEP Consensus Evaluation of Aegis Proposal, at 8. The TEP identified five strengths in Aegis's past performance. Id. at 8-9.

With respect to Global's past performance, Global identified three references for its past performance. Two of the references did not return questionnaires or otherwise respond to the agency. For the third reference, the agency received a questionnaire for a project that was a small part of the overall contract work identified by Global (approximately \$8 million of a \$400 million contract).⁵ Tr. at 41-42. This project, involving mobile security and personal security details for corrections advisors, was identified as a strength in Global's past performance. Tr. at 41. The second strength for Global's past performance involved a \$100 million contract for static guard services at the U.S. Embassy Kabul. Id. This contract, which was not referenced in Global's proposal, was performed from 2005 to 2007, outside of the 3-year period designated in the TORP for recent past performance. See AR, Tab 11, Agency Past Performance Information for Global, at 190. The TEP's evaluation of this contract was based upon information compiled by the agency's office of acquisition management.

The TEP recommended that only Aegis and Global be considered for award. The remaining proposals all received either marginal or unacceptable ratings under the technical approach or past performance factors. AR, Tab 4, TEP Chair's Report, at 7. The TEP did not make an award recommendation with respect to Aegis's or Global's proposals or any determination of technical equivalence, because the TEP did not compare the two firms' proposals.⁶ See Tr. at 17, 55.

⁵ The record indicates that Global was a subcontractor under the overall contract, performing the smaller, \$8 million portion of the contract work. AR, Tab 11, Past Performance Information for Global, at 197.

⁶ The TEP chair testified that "[t]here were certainly differences between the proposals because they were both
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The TEP provided its report and recommendation to the CO, but did not brief either the CO or SSA with respect to its evaluation. The CO testified that she reviewed the TEP's consensus evaluations and relied upon the TEP's technical expertise and experience. See Tr. at 130.

The offerors' proposed prices were evaluated by the agency price evaluation panel, which was chaired by the CO. Aegis's proposed price was \$445,444,531, and Global's proposed price was \$401,468,174.

Noting that Aegis and Global received identical color and adjectival ratings under the technical approach and past performance factors, the CO concluded that the proposals were essentially equal. See AR, Tab 3, Selection Decision, at 2, 6-7; see also Tr. at 139, 143. The CO prepared the written selection decision for the SSA, which recommended that the task order be issued to Global, rather than Aegis, based upon Global's lower price. AR, Tab 3, Selection Decision, at 7-8. The selection decision did not discuss the TEP's subfactor ratings or any of the evaluated strengths or weaknesses in the firms' proposals. It also does not discuss Aegis's higher ratings under the mobilization management and personnel staffing subfactors. Instead, the selection decision notes only that both firms received blue/excellent past performance ratings.

The CO's draft selection decision and award recommendation was provided to the SSA, who testified that he relied on the TEP's evaluation reports in reviewing the CO's recommendation. The SSA also testified that he did not review the proposals, but relied upon the expertise of the TEP in assessing the proposals.⁷ Tr. at 181, 190-91. The SSA did not receive a briefing from, or have any discussions

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unique in their approach, especially [under] each one of the separate subfactors, but that was the extent." Tr. at 55. He also testified that he personally did not see them as essentially equal and that this was also the view of the TEP. Tr. at 59, 96-97.

⁷ The SSA testified that he relied upon the TEP because he was "not an expert in Diplomatic Security." Tr. at 191.

with, the TEP with respect to the evaluation. The SSA concurred with the CO's recommendation, deciding to issue the task order to Global on the basis that Aegis's and Global's proposals were essentially equal and that Global proposed a lower price. Tr. at 182-83.

The task order was issued to Global, and this protest followed.

DISCUSSION

Aegis challenges the agency's evaluation of proposals under the technical approach and past performance factors and the agency's determination that the proposals were essentially equal.⁸ Specifically, Aegis complains that the agency's selection decision failed to consider the evaluated differences in the proposals, and instead relied simply upon the color and adjectival ratings assigned under the technical approach and past performance factors.

In reviewing protests of alleged improper evaluations and source selections, even in a task order competition as here, we do not reevaluate proposals, but rather we examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. ACCESS Sys. Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7. In order for us to review an agency's evaluation judgment, an agency must have adequate documentation to support its judgment. Northeast MEP Servs., Inc., B-285963.5 et al., Jan. 5, 2001, 2001 CPD ¶ 28 at 7. We do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and documentation prepared in response to protest contentions. Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 12. While we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than

⁸ Aegis challenged a number of the weaknesses the agency evaluated in its proposal. From our review of the record, we do not find a basis to conclude that the agency's assignment of weaknesses in this regard was unreasonable.

to arguments and documentation prepared in response to protest contentions. Id. Where an agency fails to provide documentation of its evaluation, it bears the risk that there may not be adequately supporting rationale in the record for us to conclude the agency had a reasonable basis for its evaluation and selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

Where, as here, the TORP establishes a best value evaluation plan--as opposed to selection of the lowest-priced, technically acceptable offer--evaluation of proposals is not limited to determining whether a proposal is merely technically acceptable; rather, proposals should be further differentiated to distinguish their relative quality under each stated evaluation factor by considering the degree to which technically acceptable proposals exceed the stated minimum requirements or will better satisfy the agency's needs. See The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8; Johnson Controls World Servs., Inc.; Meridian Mgmt. Corp., B-281287.5 et al., June 21, 1999, 2001 CPD ¶ 3 at 8. In determining which proposal offers the best value, the agency should consider the differences between proposals to distinguish their relative quality. Id. In this regard, ratings, whether numerical, color, or adjectival, are merely guides to assist agencies in evaluating proposals; information regarding strengths and weaknesses of proposals is the type of information that source selection officials should consider, in addition to ratings, to enable them to determine whether and to what extent meaningful differences exist between proposals. Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 6; ACCESS Sys. Inc., supra, at 7. Proposals with the same adjectival ratings are not necessarily of equal quality, and an agency may properly consider specific advantages that make one proposal higher quality than another. Pemco Aeroplex, Inc., supra, at 6-7.

Here, we find that the SSA's determination that Aegis's and Global's proposals were essentially technically equal is unsupported by the record. Although both firms' proposals received identical green/good overall ratings under the technical approach factor, the contemporaneous evaluation record documented a number of differences between the proposals that would appear to provide discriminators for the purpose of performing a cost/technical tradeoff analysis. As noted above, only Aegis's proposal received any

blue/excellent ratings under the technical approach subfactors, and the protester's proposal was assessed as having more evaluated strengths than Global's proposal. Neither the SSA nor the CO provided any explanation in the contemporaneous record, or in response to the protest, as to why these evaluated differences did not indicate technical superiority.

We recognize that the SSA testified generally at the hearing that he reviewed the TEP's evaluation narratives, including the strengths and weaknesses assigned to each firm's proposal, and concluded that the varying strengths and weaknesses did not indicate that Aegis's proposal was superior to Global's. The SSA, however, provided no specificity in his testimony to explain why the varying strengths assigned to the firms' proposals or the fact that Aegis's approach under two subfactors exceeded the contract requirements did not indicate a real technical difference between the firms' proposals that should be accounted for in his selection decision. In this regard, the record indicates that the SSA was not aware of the basis upon which the TEP assigned strengths and blue/excellent ratings. The SSA testified that the TEP did not distinguish between strengths, apparently believing that all strengths were of equal value. See Tr. at 211. Although it is true that the TEP did not designate strengths as significant or not, the TEP did in fact generally identify in its evaluation reports those strengths that exceeded the contract requirements.⁹ See Tr.

⁹ The CO apparently understood that there were differences in the strengths assigned to the firms' proposal, referring to some strengths as "notable." See, e.g., Tr. 139, 147. Although the CO also generally testified that she reviewed all of the evaluated strengths and weaknesses, the only example the CO provided to support her view that the proposals were essentially equal, concerned strengths assigned to the proposals under the program and logistics management subfactor for which the two firms' proposals received the same green/good rating. The CO also does not explain why Aegis's higher blue/excellent rating under two subfactors did not indicate a technical difference that should be considered. Rather, the substance of the CO's testimony is that, because the firms received the same overall green/good factor rating, there was no need to consider Aegis's two excellent ratings. See Tr. at 165-66.

at 34. Similarly, the SSA testified that a blue/excellent rating could be assigned for offering to meet or exceed the contract requirements, see Tr. at 193; however, the TEP assigned a blue/excellent rating only where a proposed approach exceeded the contract requirements. See Tr. at 14.

In sum, given this record, where the contemporaneous documentation does not evidence consideration of the evaluated differences in the firms' proposals and the SSA's and CO's testimony does not reasonably show such consideration, we do not find reasonable the agency's conclusion that the firms' proposals were essentially technically equal. Accordingly, we sustain Aegis's proposal challenging the agency's selection decision and recommend that the agency make a new selection decision that considers the evaluated differences in the firms' proposals.

With respect to the past performance factor, the CO and SSA both concluded that the firms' identical blue/excellent ratings under this factor indicated that the firms' past performance was equal. Given our recommendation that the agency make a new selection decision that considers the merits of the firms' respective proposals, we think that the agency should also review the firms' evaluated past performance to determine whether there are qualitative differences in the firms' past performance records. As with its evaluation of the proposals under the technical approach factor, the record does not evidence any meaningful consideration of the firms' past performance. That is, there is no indication that the TEP, CO, or SSA meaningfully considered whether there were differences between the two firms' past performance as indicated by the performance of work that was different in size, scope or complexity or that was performed recently.¹⁰ In this regard, the record

¹⁰ The TORP provided that the agency's evaluation of past performance would include considering the currency of the offerors' past performance and limited the offerors' past performance references to work performed within the last three years. See TORP at 18, 20. In its post-hearing comments, the agency appears to argue, citing Bannum, B-404712, Mar. 1, 2011, 2011 CPD ¶ 52, that an agency may indiscriminately consider past performance information outside the time limits specified in a solicitation. See Agency Post-Hearing Comments at 7. In Bannum, however, we
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indicates that for both offerors the agency considered past performance that did not appear to satisfy the TORP's definition of relevant work.

RECOMMENDATION

We recommend that the agency make a new selection decision that considers the evaluated differences in the protester's and awardee's proposals. If Aegis's proposal is selected for award, we recommend that the agency terminate the task order issued to Global and issue a task order to the protester. We also recommend that Aegis be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2010). The protester's certified claims for such

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found the agency's evaluation of past performance information not identified by the protester in its proposal was consistent with the time frame specified in the solicitation. See Bannum, supra, at 4.

costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel