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## Decision

**Matter of:** J.R. Conkey & Associates, Inc. dba Solar Power Integrators

**File:** B-406024.4

**Date:** August 22, 2012

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### DIGEST

Protest is sustained where the record shows the evaluation of protester's proposal was unreasonable and, in making the award decision, the agency conducted a tradeoff only between the three proposals with the highest point scores but did not consider the lower prices offered by other apparently technically acceptable lower-rated offerors, including protester.

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### DECISION

J.R. Conkey & Associates, Inc., dba Solar Power Integrators (SPINT), of Roseville, California, protests the award of a contract to R.E.M. Construction Co., of Pasadena, California, under request for proposals (RFP) No. VA-101-11-RP-0021, issued by the Department of Veterans Affairs (VA) for construction of a 3.3 megawatt (MW) photovoltaic system at the VA Southern Nevada Healthcare System Medical Center in North Las Vegas, Nevada. SPINT argues that the VA improperly evaluated its proposal and made an inadequate price/technical tradeoff decision.

We sustain the protest.

### BACKGROUND

The RFP, issued on June 7, 2011, contemplated the award of a fixed-price contract for the provision of all labor, materials, supplies, transportation, equipment, and supervision necessary to provide a photovoltaic system. The system will be

comprised of one 1.5 MW solar farm on approximately 10 acres with ground mounted single or dual axis tracking solar panels. The system will also include four steel truss canopy structures with fixed solar panels to provide 1.8 MW of power and shaded parking spaces below. RFP, Part 1, at ¶ A.1.

Award was to be made, without conducting discussions, on the basis of price and technical considerations deemed most advantageous to the government.<sup>1</sup> If technical proposals were essentially equal, award would be made on the basis of lowest price. Id. at ¶¶ A4.A, A4.B. The solicitation set forth three technical factors, in descending order of importance: construction management, past performance, and schedule. All of the technical factors, when combined, were significantly more important than price. Id. at ¶ A4.B.

Under the construction management factor, proposals were to be evaluated on the basis of three equally important subfactors, corporate project experience, project personnel experience, and technical/management approach. Id. at ¶ A4.B. For each project, offerors were required to complete a general contractor reference form found in the solicitation. RFP at 12. Under the schedule factor, proposals were to be evaluated on the realism and reasonableness of their proposed schedules. RFP at ¶ A4.B. The past performance and price factors are not at issue here.

The contracting officer (CO) received proposals from 24 firms by the August 12 closing date, including those from SPINT and R.E.M. Award was made to R.E.M. on September 28. SPINT filed a timely protest in this Office after its debriefing. On November 15, VA advised our Office of its intention to take corrective action by reevaluating proposals. We dismissed the protests of SPINT and another unsuccessful offeror as academic.

The technical evaluation board (TEB) reconvened to reevaluate the proposals and forwarded the results to the CO. The TEB prepared two documents for each proposal. One document was a score sheet form. Under the agency's methodology, a maximum of 100 points was available for each proposal--45 points for the construction management factor (15 points for each subfactor), 30 points for the past performance factor, and 25 points for the schedule factor. Agency Report (AR), Exhibit (Exh.) 10, TEB Consensus Score Sheets. The other document was a narrative report form that summarized the proposal's strengths and weaknesses. AR, Exh. 11, TEB Evaluation Reports.

The CO, acting as the source selection authority (SSA), reviewed the TEB's score sheets and evaluation reports. He ranked the proposals from highest point-score to lowest. R.E.M.'s proposal, with a point score of [DELETED] and a price of

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<sup>1</sup> Although the solicitation uses the term "cost," we assume that the VA meant to use the term "price" since the RFP anticipated the award of a fixed-price contract.

\$23,347,412, was ranked third. The two proposals ranked higher than R.E.M.'s proposal were also higher-priced than R.E.M. SPINT's proposal, with a point score of [DELETED] and a price of \$[DELETED], was ranked below that of numerous other offerors. SPINT submitted the second-lowest price.<sup>2</sup>

The CO noted the RFP's instruction that all technical factors, when combined, were significantly more important than price. Without conducting any analysis of the technical merits underlying any proposal's point scores, and without considering that several other proposals, including SPINT's, offered lower prices, the CO decided to consider only the proposals with the three highest point scores—the "top three most highly technical rated offers"—for award. AR, Exh. 14, CO's Rationale for Award, at 7. He eliminated one proposal based on its price, which was much higher than the prices of the other two proposals. The CO deemed the proposals of R.E.M. and the other firm essentially equal based on the closeness of their point scores as well as his analysis of their respective strengths and weaknesses. Id. at 7-9.

The CO acknowledged that a tradeoff process was appropriate where it might be in the best interest of the government to consider award to other than the lowest-priced offeror or other than the highest technically rated offeror, but stated that he "did NOT use the trade-off analysis" because he determined that the top two remaining "most highly rated offerors" were essentially equal. Id. at 9. As a result, he reaffirmed his award to R.E.M. on the basis of its lower price. Id.

SPINT argues that the VA improperly evaluated its proposal because some of the flaws it identified either do not exist or are miniscule. SPINT also argues that the VA failed to conduct an adequate price/technical tradeoff analysis because that analysis only considered the three proposals with the highest point-scores, and failed to consider whether their alleged technical superiority was worth paying a higher price than that offered by SPINT.

## DISCUSSION

The evaluation of an offeror's proposal is a matter within the agency's discretion. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest of an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. While we will not substitute our judgment for that of the agency,

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<sup>2</sup> The lowest-priced offer was \$1 million--drastically lower than any other offer received and likely in error.

we will sustain a protest where the agency's conclusions are inconsistent with the solicitation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5. As discussed further below, we find that the evaluation was unreasonable in several respects and inconsistent with the solicitation's evaluation criteria.

#### Construction Management Factor – Corporate Project Experience Subfactor

SPINT argues that the VA unreasonably evaluated its proposal under the corporate project experience subfactor with respect to its project descriptions and its information on the projects' architect and engineers.

The RFP required each offeror to demonstrate its corporate experience with projects similar to the instant project in both size and scope. In describing each project, offerors were required to provide five types of information, including: (1) the project title, location, and a brief description that included the building use and contracting method (design build, design bid construct, and so on); (2) the project owner and a point of contact; and (3) the project design architect and engineers (A/E) and a point of contact. RFP, Part II, ¶ C3.A.1.a. Again, the RFP required offerors to submit a general contractor reference form for each project. The TEB established a maximum score of 15 points for this subfactor, three points each for the five types of information. AR, Exh. 10, TEB Consensus Score Sheets.

SPINT described its corporate project experience in both its proposal narrative and in proposal exhibits. The narrative listed six primary projects performed by SPINT, as well as other experience for SPINT and its subcontractors. The descriptions of each project were a sentence or two, with minimal details, and referred to the proposal's exhibits for more information. AR, Exh. 7, SPINT Proposal, Section A. The exhibits, the required general contractor reference forms, contained similarly brief descriptions of the projects. Id., Exhibits A-E.

The VA awarded SPINT's proposal 10 of the 15 available points, downgrading it for two reasons. First, the VA found that the proposal "[d]id not provide project descriptions." Second, the VA found that the proposal did not provide any information on the project design A/E or the point of contact on the referenced projects. AR, Exh. 10, TEB Consensus Score Sheet for SPINT, at 1; Exh. 11, TEB Evaluation Report for SPINT, at 1.

SPINT argues that its proposal did include brief project descriptions. As the CO explains, however, the TEB determined that the descriptions were too brief or limited for it to fully evaluate the firm's experience. The CO states that, due to the minimal information SPINT provided, the TEB was unable to assess whether the complexity of the project(s) described were similar in size and scope to the system being acquired here. CO Statement, at 6. SPINT does not challenge this explanation, and we have no basis to question this aspect of the evaluation.

However, the CO also states that SPINT's proposal did not include the contracting method for these projects. CO Statement, at 6. Our review of the record shows that, for all but one of its projects, SPINT did include this information on the general contractor reference forms found in its proposal exhibits.

VA does not dispute that this information was in the exhibits, but argues that the forms were not in the narrative portion of the proposal. VA argues that SPINT did not organize its proposal "consistent with the technical factor prescription." Supp. AR, at 4. In what appears to be its rationale for not crediting SPINT for including this information, VA argues that agencies evaluating one section of a proposal are not required to go in search of additional information that an offer has omitted or failed to adequately present, citing Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558 et al., Nov. 22, 2011, 2011 CPD ¶ 257 at 5.

While the agency is correct, it does not bear the responsibility of an inadequately written proposal, the agency does not have license to ignore information in a proposal that is readily apparent. In Carolina Satellite, we rejected the protester's assertion that the agency should have looked to information addressing other sections of the protester's proposal when the agency identified weaknesses in a discrete section of the protester's proposal. Unlike Carolina Satellite, however, the record here reflects that the allegedly missing information was not set forth in an unrelated section of the protester's proposal; rather, it was contained in a reasonably identified proposal exhibit, and the information should have been apparent to the evaluators.

In this regard, the record reflects that the solicitation did not require offerors to organize their proposals in any particular manner, and SPINT addressed the requirements in both a narrative, divided into sections that generally correlated with the evaluation criteria, and in a number of exhibits. SPINT's proposal began with a table of contents that clearly identified the organization of its proposal, including its exhibits. For example, Exhibit A was identified as "Corporate Project Experience: Solar Power Integrators." AR, Exh. 7, at 3. The exhibits are the general contractor reference forms required by the solicitation. SPINT's narrative also clearly referenced the exhibits and their contents. While the VA complains that the proposal dividers and exhibits were not labeled, our review of the proposal leads us to conclude that its contents should have been readily apparent. SPINT's proposal did include the contracting method for nearly all of its projects, and the record reflects that this information should have been readily apparent to the evaluators. As a result, the agency's blanket statement that the information was not provided evidences an unreasonable evaluation.<sup>3</sup>

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<sup>3</sup> SPINT also argues that its proposal included a point of contact for each project. We agree that the proposal includes "project owner" points of contact. However, it  
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## Construction Management Factor - Technical/Management Approach

SPINT argues that the VA unreasonably evaluated its proposal under the technical/management approach subfactor with respect to its quality assurance/quality control (QA/QC) plan and its project organization chart narrative.

The RFP required offerors to provide six types of information under the technical/management approach subfactor: (1) project delivery philosophy; (2) QA/QC plan; (3) project organizational chart and narrative; (4) capability to perform (bonding capacity and current workload); (5) narrative describing the plan for phasing the work and related information; and (6) information on materials staging, temporary trailer offices, and other activities. RFP, Part II, ¶ C3.A.1.c.

Both the evaluation score sheet forms and the narrative evaluation forms list five items for evaluation under this subfactor, each worth a maximum of three points: project delivery/philosophy; QA/QC; organizational chart and narrative; bonding capacity; and current workload. These five items correspond with only the first four types of information listed in the RFP, and omit any reference to the last two types of information identified under the subfactor--the phasing plan and information on staging and other matters. As discussed below, it appears that the TEB failed to consider this information in conducting its evaluation under the most important evaluation factor, construction management, and that it may have considered it under the least important evaluation factor, schedule.

In response to the requirement for a QA/QC plan, SPINT's proposal stated that it proposed to use various checklists that it included in the proposal. SPINT also briefly described the pre-installation testing that would be conducted of the proposed photovoltaic module and inverters. AR, Exh. 7, SPINT Proposal, Section C.2., Exhibits K, L.

The VA evaluated the proposal as having a weakness because its QA/QC plan was "very weak" and did not address responsibilities and procedures in place to meet the contract requirements. The TEB assigned the proposal one of the three points available for this plan. AR, Exh. 11, TEB Evaluation Report for SPINT, at 3; Exh. 10, TEB Consensus Score Sheet for SPINT, at 1. The CO explains that the TEB was unable to determine, from the proposal's brief descriptions, how SPINT would perform its day-to-day QA/QC functions, who would perform inspections, or the frequency and extent of inspections. CO's Statement, at 8.

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is not clear from the proposal that SPINT addressed the requirement to provide information concerning the A/E and related points of contact. On this record, we have no basis to find this aspect of the evaluation unreasonable.

SPINT argues that it should have received all of the available points because it provided checklists, but does not address the CO's statement that its checklists were insufficient to warrant those points. As a result, we have no basis to find the evaluation unreasonable.

However, the solicitation also required the submission of a project organizational chart and narrative that included the team members submitted under the project personnel experience subfactor. Offerors were to clearly describe the firm and individuals with primary responsibility for the work, as well as the roles and responsibilities of individuals proposed as consultants and subcontractors. RFP, Part II, ¶ C3.A.1.c.3).

The VA evaluated SPINT's proposal as having a weakness because its narrative did not address roles and responsibilities of key personnel, and awarded it one of three available points. AR, Exh. 11, TEB Evaluation Report for SPINT, at 3; Exh. 10, TEB Consensus Score Sheet for SPINT, at 1. The TEB assigned SPINT's organizational chart--located in a proposal exhibit--the maximum points available.

We agree with SPINT that the record shows it did address the roles and responsibilities of its key personnel in its proposal. Specifically, the section of its proposal devoted to its organizational chart and team narrative included a detailed discussion of its proposed project personnel and tasks for which they would be responsible, as well as a list of its major subcontractors and their responsibilities. AR, Exh. 7, SPINT Proposal, Section C.3. For example, one of SPINT's key personnel was its executive lead. In discussing this individual's qualifications, SPINT included a heading entitled, "Tasks on Project," under which it stated that she would be responsible for such tasks as coordinating structural and electrical engineers, updating the schedule, arranging for timely submittals of plan sets, and equipment submittals. Id. A similar paragraph was included for each of SPINT's key personnel.

Thus, on the record here, we conclude that the TEB incorrectly concluded that SPINT did not address this information, and that its evaluation was unreasonable.

#### Schedule Factor

SPINT argues that VA improperly evaluated its proposal under the schedule factor with regard to its narrative information.

Under the schedule factor, offerors were required to provide two types of information. First, they were required to submit a progress schedule in a time-scaled bar graph format. RFP, Part II, ¶ C3.A.3.a. The score sheet and narrative evaluation forms refer to this area as "Progress schedule," worth a maximum of 15 points. AR, Exh. 10, TEB Consensus Score Sheets, Exh. 11, TEB Evaluation

Reports. SPINT received 14 points for its progress schedule, and does not challenge the evaluation in this area.

Second, the RFP required offerors to specify how much allowance had been made for bad weather in the schedule, the days of the week and hours of construction operations during each phase, and the percentage of contract completion that would be achieved at the end of each month. RFP, Part II, ¶ C3.A.3.b. The score sheet and evaluation forms refer to this area as “Narrative/Weather Days/% Complete,” worth a maximum of 10 points--seven for “Narrative” and three for “Hours of operation.” AR, Exh. 10, TEB Consensus Score Sheets, Exh. 11, TEB Evaluation Reports.

The VA evaluated SPINT’s proposal as having two weaknesses with respect to the second aspect of the schedule factor, one because it did not address hours of operation, and another because its narrative “did not address project delivery and construction operations during each phase.” AR, Exh. 11, TEB Evaluation Report for SPINT, at 5. The VA awarded SPINT’s proposal no points for “hours of operation,” and four of seven points for “narrative.” AR, Exh. 10, TEB Consensus Score Sheet for SPINT, at 2.

SPINT agrees that it omitted the hours of operation, but contends that it addressed project delivery and construction operations during each phase. SPINT cites several sections of its proposal as setting forth a phasing narrative and a description of staging/lay-down areas that describes the construction operations and project delivery methods. See AR, Exh. 7, SPINT Proposal, Sections C.5, C.6, Exhibit G.

The VA counters that the solicitation required more than a discussion of the construction operations at each phase, and that SPINT’s narrative failed to clearly specify the allowance in its schedule for bad weather; the days of the week or hours of construction operation during each phase; or the percentage of contract completion that will be achieved at the end of each month. Supp. AR, at 5.

Our review shows that both SPINT and the VA are correct. We note first that SPINT addressed this matter in the section of its proposal responsive to the technical/management approach subfactor since the last two criteria under that subfactor required offerors to provide a phasing plan and related information. Thus, as noted above, it appears that the TEB may have evaluated information that should have been considered under the most important evaluation factor, construction management, under the least important evaluation factor, schedule.

The VA is also correct, however. Under the schedule factor, the RFP required offerors to specify their allowance for bad weather, days of the week and hours of construction operations, and percentage of contract completion to be achieved each month, yet SPINT’s proposal does not address any of these requirements. Thus, it is apparent that the VA could have reasonably downgraded SPINT’s proposal in this



regard. The VA's contemporaneously stated reason for downgrading the proposal, however, simply has nothing to do with the schedule factor, and suggests that the agency was confused regarding its evaluation under the technical/management approach subfactor, and the schedule factor.<sup>4</sup> Given the deficiency of the evaluation record in this regard, we are unable to conclude that the agency's evaluation was reasonable or consistent with the solicitation's evaluation criteria, and therefore sustain this aspect of the protest as well.

### Trade-Off Analysis

As a final matter, SPINT argues that the CO, acting as the SSA, failed to conduct an adequate price/technical tradeoff analysis because that analysis only considered the three proposals with the highest point-scores, and failed to consider whether their alleged technical superiority was worth paying a higher price than that offered by SPINT. We agree.

In a "best value" procurement, it is the function of the source selection authority to perform a tradeoff between price and non-price factors, that is, to determine whether one proposal's superiority under the non-price factor is worth a higher price. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its source selection decision. e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. Before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explaining why its technical superiority warrants paying a price premium.<sup>5</sup> Coastal Env'ts, Inc., B-401889, Dec. 18, 2009, 2009 CPD ¶ 261 at 4; ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7.

Here, the record shows that the CO impermissibly limited his price/technical tradeoff analysis to a comparison of the three proposals with the highest point-scores, regardless of their price, without any qualitative assessment of the technical

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<sup>4</sup> The confusion in this regard appears to stem from the fact, as noted above, that the worksheets used by the evaluators to rate offerors under the various evaluation factors and subfactors failed to include the last two criteria of the technical/management approach subfactor. These criteria pertained to the evaluation of an offeror's written narrative plan for phasing the work, as well as the evaluation of an offeror's use of the site for materials, staging, temporary trailer offices, etc. RFP, Part II, ¶ C3.A.1.c. Given that this problem appears to be associated with the evaluators' use of defective evaluation forms, it is likely that it may have impacted the agency's evaluation of other firms' proposals as well.

<sup>5</sup> There is no evidence that any proposals was considered to be unacceptable.

differences between these proposals and any of the other technically acceptable, lower-priced proposals--such as SPINT's--to determine whether they contained features that would justify the payment of a price premium. A proper tradeoff decision must provide a rational explanation of why a proposal's evaluated technical superiority warrants paying a premium. Federal Acquisition Regulation (FAR) § 15.308 (The source selection "documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs."); Coastal Env'ts, Inc., supra, at 4-5. Here, the SSA did not identify what benefits in R.E.M.'s proposal warranted paying a premium to R.E.M. when compared to SPINT's apparently acceptable lower-priced proposal.<sup>6</sup>

## PREJUDICE

As discussed above, the record shows that the VA's evaluation of SPINT's proposal was unreasonable in several respects and that the CO's tradeoff decision improperly failed to include a qualitative assessment of the technical differences between the three proposals with the highest point scores and any of the other technically acceptable, lower-priced proposals to determine whether they contained features that would justify the payment of a price premium.

The VA, however, argues that SPINT was not prejudiced by these errors because there are numerous offerors with higher point-scores and the solicitation stated that the non-price factors, when combined, were significantly more important than price. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

Here, it is unclear precisely how much impact the deficiencies identified above had on the evaluation as a whole in terms of point scores or, more importantly, in terms

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<sup>6</sup> The CO's mechanical decision to compare only the three proposals that received the highest point scores is not a valid substitution for the qualitative assessment of the technical differences of the proposals or of the benefits associated with a proposal's additional cost. See FAR § 15.308; Burchick Construction Co., B-400342, Oct. 6, 2008, 2008 CPD ¶ 203 at 6, n.9. Point scores are but guides to intelligent decision-making; the propriety of a price/technical tradeoff turns not on the difference in point scores and ratings *per se*, but on whether the agency's judgment concerning the significance of the difference is reasonable and adequately justified in light of the evaluation scheme. See Shumaker Trucking and Excavating Contractors, Inc., supra at 8.

of the underlying assessment of the technical quality of proposals. It is true that our review shows SPINT's proposal was reasonably evaluated in some respects, but equally true that the evaluation was unreasonable in other respects. It is also true that SPINT's proposal was the second lowest-priced received, and, more significantly, lower-priced than the top three proposals considered by the agency for award. We cannot say whether the CO would have determined that the technical features of R.E.M.'s proposal justified the payment of a price premium if he had conducted a proper tradeoff decision. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that SPINT has established the requisite competitive prejudice to prevail in a bid protest.

#### RECOMMENDATION

We recommend that the agency reevaluate proposals in a manner that is consistent with the solicitation's evaluation criteria, and properly document its evaluation. Upon completion of the reevaluation, the agency should perform and document a new price/technical tradeoff analysis. If R.E.M.'s proposal is not found to reflect the best value to the government, the agency should terminate for the convenience of the government R.E.M.'s contract and award to the offeror whose proposal is determined to be the best value to the government. We also recommend that SPINT be reimbursed its costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2012). The protester's certified claims for such 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  
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