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Decision

Matter of: OMNIPLEX World Services Corporation

File: B-406251; B-406251.2

Date: March 14, 2012

Timothy Sullivan, Esq., Katherine S. Nucci, Esq., and Scott F. Lane, Esq., Thompson Coburn LLP, for the protester.

Amy L. O'Sullivan, Esq., Robert S. Nichols, Esq., and Sarah B. Gleich, Esq., Crowell & Moring LLP, for KeyPoint Government Solutions, Inc., an intervenor.

Jacqueline Posner, Esq., Office of Personnel Management, for the agency.

Peter D. Verchinski, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's notification to all offerors of a common cutoff date for receipt of proposals has the intent and effect of a request for final revised proposals where all offerors submitted revisions and no offerors were prejudiced.

DECISION

OMNIPLEX World Services Corporation (OMNI), of Chantilly, Virginia, protests the award of contracts to CACI Premiere, of Chantilly, Virginia, KeyPoint Government Solutions, Inc., of Loveland, Colorado, and US Investigation Services, LLC (USIS), of Falls Church, Virginia, under request for proposals (RFP) No. OPM15-11-R-0003, issued by the Office of Personnel Management (OPM), for background investigation services. OMNI primarily asserts that OPM acted improperly by awarding the contract without expressly stating that OPM's request for proposal revisions was the final chance offerors would have to revise their proposals.

We deny the protest.

BACKGROUND

The RFP, issued on February 18, 2011, provided for the award of one or more fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contracts for fieldwork related to federal background investigations. The RFP sought prices for various types of investigation services, such as basic record searches, file reviews, subject

interviews, and periodic reinvestigations, for a base year and four option years. RFP at 3, 5. The estimated maximum price for the contract (including all option years) was approximately \$2.5 billion. Id. at 3.

Offerors were informed that award would be made on a best-value basis, considering price and the following technical evaluation factors (listed in descending order of importance): technical merit, corporate capabilities, and past performance. The RFP stated that technical considerations were more important than price. The RFP also stated that the government may make award without discussions, and thus offerors should submit their best terms (both price and technical) in their initial offer. RFP at 101. With regard to the price evaluation, the RFP provided that prices (including the base year and all option years) would be analyzed for reasonableness, and to determine the offeror's understanding of the work and ability to perform the contract. RFP at 111.

The agency received seven proposals by the May 9 closing date. Among these proposals, only those submitted by OMNI, CACI, KeyPoint, and USIS were evaluated by the technical evaluation panel (TEP) as "conditionally acceptable as submitted," and were determined to be in the competitive range.¹ AR, Tab C-3, Competitive Range Determination, at 5. The remaining three proposals were rated technically unacceptable and were not considered further.

The competitive range offerors' prices were evaluated on the basis of their total prices for the five-year term of the contract, which OPM determined by assuming that the maximum amount of goods and services would be ordered in each year.²

¹ The contracting officer instructed the TEP members to classify proposals as "acceptable as is," "conditionally acceptable as submitted," or "definitely unacceptable." Agency Report (AR), Tab C-13, at 1. In addition to these ratings, the individual evaluators also rated each firm's proposal as excellent, acceptable, marginal, or unacceptable under each technical evaluation factor. See AR, Tab C-2, C-4, C-9, C-14, C-17.

² The agency recognized, however, that the government intended to schedule work based on each awardee's capacity, performance, and contract line item number (CLIN) price. AR, Tab C-3, Competitive Range Determination, at 5.

The competitive range offerors' initial price proposals were evaluated as follows:

	Price (\$)
CACI	3,487,337,336
OMNI	3,416,100,384
KeyPoint	3,327,770,340
USIS	3,094,835,069

AR, Tab C-3, Competitive Range Determination, at 5. The agency determined that all of these prices were unacceptably high, and decided that it would not perform a more extensive price analysis at that point. In an effort to obtain lower prices, the agency decided to amend certain solicitation terms and invite new price proposals from the competitive range offerors, deferring its final price evaluation until it had received revised proposals.

On July 8, 2011, OPM initiated discussions with the competitive range offerors with a letter that included a series of questions and requests for additional information relating to both technical and cost proposals, and the amendment/revisions to the RFP, which included changes to the RFP's performance work statement, a revised wage determination, and a revised pricing workbook, among other changes.³ AR, Tab D-4, RFP Amend. 4. The discussions letter instructed offerors to submit a "formal proposal revision," which was due July 21. Id. at 1. Further, offerors were advised that "OPM wants to ensure that the vendor is aware that several changes have been made to the solicitation which we believe will **significantly** lower the overall price of the proposal." Id. (emphasis in original). The letter also stated that the offeror's responses "will serve as a proposal revision, becoming part of any subsequent contract" between the firm and the government. Id.

On July 15, the agency amended the solicitation to extend the deadline for proposal revisions (to July 25), and provided answers to questions that vendors, including OMNI, had submitted in response to the July 8 communications.⁴ In its questions, OMNI had noted that the agency's July 8 letter did not contain specific questions or clarifications relating to its pricing proposal, and OMNI inquired as to whether this was correct. AR, Tab D-5, at 4. The agency responded,

³ The revised solicitation included the provision that the government reserved the right to make award without conducting discussions, and that offerors should submit their proposals on the most favorable terms possible. AR, Tab D-4, encl. 5; RFP at 101.

⁴ The agency also revised certain solicitation provisions that are not relevant to the protest. AR, Tab D-5, at 5.

[d]ue to the numerous changes to the solicitation, it is our opinion that the pricing proposal will be significantly changed and resubmitted in its entirety. Pending a pricing evaluation of the proposed revision, other questions may arise which we will ask you to address at a later date.

Id. OMNI also questioned that, although OPM had made certain changes to the solicitation, the underlying “scope/coverage/reporting requirements of all CLIN products” had not changed, and this (combined with the fact that OPM had no comments regarding its pricing proposal) led OMNI to be unsure why the agency expected “significantly lower pricing.” Id. The agency responded by explaining that the “majority of Section F: Deliveries or Performance, has been changed,” and that firms should carefully examine the revisions in providing a revised pricing proposal. Id.

The four competitive range offerors submitted revised proposals by July 25. In its revised price proposal, OMNI explained that it “has reviewed the changes to the solicitation, but does not consider the solicitation changes to provide an opportunity for OMNIPLEX to significantly lower its prices.” AR, Tab B, OMNI July 25 Vol. II, Price Proposal Revised, sect. 7. Indeed, the firm acknowledged that, due to certain contract revisions, OMNI was actually submitting higher prices. Id. The revised price proposals were evaluated as follows:

	Price (\$)	Change in Price (\$)
CACI	3,404,386,497	- 82,950,838
OMNI	3,987,168,290	+ 571,067,906
KeyPoint	3,293,329,643	- 34,440,697
USIS	2,709,826,194	- 385,008,874

AR, Tab C-11, Pricing Evaluation, at 4.

The contract specialist’s price evaluation report noted that, while CACI, KeyPoint, and USIS had lowered their prices, OMNI had increased its prices by over \$500 million, such that OMNI’s prices were “excessive” and “outside the scope of the other vendors.” Id. at 5. The agency performed a breakdown of OMNI’s CLIN pricing and determined that OMNI’s prices were “across the board very high and outside of the reasonable range.” Id. at 13, 16.

The contracting officer concluded that OMNI’s revised technical proposal was “conditionally acceptable,” but that the firm’s pricing was unacceptable. AR, Tab C-12, Procurement Summary, at 10. The CO noted that OMNI’s pricing was “materially outside of what we consider reasonable on nearly every CLIN,” finding that OMNI would need to reduce its overall proposed CLIN prices “by a minimum of 17.1% across the board to be within a reasonable range of the other proposals.”

Id. at 10-11. The CO ultimately concluded that OMNI's price precluded the company from receiving an award. Id. at 12.

Without conducting any further discussions or requesting further proposal revisions, the agency made awards to USIS, KeyPoint, and CACI, whose technical and price proposals were found acceptable. This protest followed.

DISCUSSION

OMNI argues that the agency's failure to request final proposal revisions rendered the awards improper under Federal Acquisition Regulation (FAR) § 15.307(b). This section provides that

. . . [a]t the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.⁵

OMNI asserts that OPM's July 8 request failed to expressly inform offerors that discussions were concluded and that firms were being given a final opportunity to revise their proposals. OMNI further claims that it "could and would have reduced our pricing substantially had we gotten that expected opportunity to submit a final proposal revision." Protester's Comments, Second Declaration of Director of Contracts for OMNI, at 3.

Our Office has repeatedly held that, where an amendment to a solicitation does not specifically request offerors to submit best and final offers (or final proposals revisions), language giving notice to all offerors of a common cutoff date for receipt of offers has the intent and effect of a request for best and final offers (or final proposal revisions). Aerospace Design, Inc., B-247938, July 21, 1992, 92-2 CPD

⁵ Prior to 1998, the FAR provision concerning requests for final proposal revisions was found at FAR § 15.611. It required that, upon completion of discussions, the contracting officer issue a request for best and final offers (BAFO) to all offerors still remaining in the competitive range, and required that such requests include notice that discussions were concluded, state that this was an opportunity to submit a BAFO, and specify a common cut-off date and time for submission of written BAFOs. See Spectrum Scis. & Software, Inc., B-282373, June 22, 1999, 99-1 CPD ¶ 114 at 3. The parties do not assert that there is any material difference between the two FAR provisions.

¶ 33 at 6; Israel Aircraft Indus., Ltd., B-239211, July 30, 1990, 90-2 CPD ¶ 84 at 4; James R. Parks Co., B-186031, June 16, 1976, 76-1 CPD ¶ 384 at 5. The underlying purpose of the requirement for a common cutoff date is to ensure that all offerors are being treated fairly and on an equal basis. See Raytheon Tech. Servs. Co. LLC, B-404655.4 et al., Oct. 11, 2011, 2011 CPD ¶ 236 at 6; Telos Field Eng'g, B-253492.2, Nov. 16, 1993, 93-2 CPD ¶ 275 at 5.

Here, offerors were informed, on July 8, that the firms should provide a “formal proposal revision,” which would become part of any subsequent contract, no later than “3:00 PM on July 21, 2011.” AR, Tab D-4, at 1. The agency then subsequently informed all offerors that it was extending “the receipt date for proposal revisions to 2:30 PM Monday July 25, 2011.” AR, Tab D-5. This language clearly constituted notice to all offerors of a common cutoff date for receipt of revised offers. Given this, we find the agency’s actions were proper.⁶

Furthermore, it is clear from the record that all offerors were treated equally by OPM and that all offerors understood that they had the opportunity to revise their technical and price proposals. Indeed, with regard to price, offerors were asked to submit entirely new pricing proposals.⁷ OMNI thus was treated the same as the other offerors, and the firm had no reasonable expectation that the agency would conduct another round of discussions. See American KAL Enters., Inc., B-232677.3, Feb. 3, 1989, 89-1 CPD ¶ 112 at 2 (unreasonable for protester to ignore common cutoff date for revised offers in the expectation that the agency would call for another round of revisions).

OMNI also asserts that the agency’s discussions were not meaningful because the firm was not informed that its initial price was found to be unreasonably high. In this regard, OMNI asserts that the agency’s July 8 “generic message” to all offerors that the agency was expecting offerors to submit significantly lower pricing failed to provide sufficient notice to the firm that the agency had found its price unacceptable. We disagree.

⁶ The protester cites a decision by the Court of Federal Claims, Dubinsky v. United States, 43 Fed.Cl. 243 (1999), in support of its argument that award was improper because the agency failed to inform offerors that discussions were complete and that offerors were being given a final opportunity to revise their proposals. In Dubinsky, the agency engaged in unequal discussions by allowing the awardee additional opportunities to revise its proposal that were not extended to the other offerors. These facts are not present here, and thus Dubinsky is inapposite.

⁷ Further, as stated above, the revised solicitation cautioned offerors to submit their proposals on the most favorable terms possible. AR, Tab D-4, encl. 5; RFP at 101.

In a negotiated procurement where the agency conducts discussions, those discussions must be meaningful--that is, they must be sufficiently detailed so as to lead the offeror into the areas of its proposal requiring revision. Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 10. Moreover, where proposal defects are first introduced in a post-discussion proposal revision, an agency has no duty to reopen discussions or conduct additional rounds of discussions. Id.

Here, OPM's determination that OMNI's initial pricing was unacceptably high became irrelevant when the agency decided to amend the requirements and informed offerors that the agency was expecting "entire[ly] revised pricing proposals" with significantly lower prices. AR, Tab D-5, at 3. When the price evaluators found OMNI's revised prices to be unreasonably high relative to those revised requirements, it had no duty to conduct an additional round of discussions regarding price. Accordingly, we find the agency's actions were not improper.

Finally, OMNI has raised various other protest grounds, including the assertions that the agency conducted a flawed technical evaluation of OMNI's proposal and that the agency improperly made its award decisions based on a lowest-priced technically-acceptable evaluation scheme.

Given the agency's reasonable determination that OMNI's proposal was not eligible for award, based on its price--which the protester does not challenge--we will not further discuss OMNI's remaining protest arguments.⁸

The protest is denied.

Lynn H. Gibson
General Counsel

⁸ Even if OMNI's technical submission received the highest possible rating, or the agency conducted price-technical tradeoffs with OMNI and each of the awardees, OMNI could not receive the award due to its high price. The protester was thus not prejudiced by any errors in the agency's technical evaluation of its proposal or in the source selection evaluation scheme. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996) (competitive prejudice is a necessary element of any viable bid protest).