

Decision

Matter of: DGC International
File: B-410364.2
Date: November 26, 2014

Ayman Bekdash, DGC International, for the protester.
Scott Risner, Esq., United States Agency for International Development, for the agency.
Pedro E. Briones, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's proposed corrective action, which included reopening discussions, requesting revised proposals, and making a new award decision, is denied where the agency reasonably determined that it had conducted unequal discussions and that corrective action was necessary to remedy the error.

DECISION

DGC International (DGC) of Vienna, Virginia, protests the corrective action proposed by U.S. Agency for International Development (USAID) in connection with the agency's procurement of logistical support services for USAID's mission in Afghanistan under request for proposals (RFP) No. SOL-306-14-000014. USAID took corrective action in response to DGC's earlier protest, which we subsequently dismissed as academic. See DGC Int'l, B-410364, Sept. 18, 2014. DGC argues that the corrective action is improper because it does not remedy what DGC views as the underlying defects in the agency's initial evaluation.

We deny the protest.

BACKGROUND

The RFP was issued on May 14, 2014, and provided for the award of a fixed-price, 2-year contract for logistical support services (such as warehousing, open-air staging, and property management services) to support USAID's efforts to reutilize and distribute foreign excess personal property available after the drawdown of international forces in Afghanistan. See RFP at 7; attach. J1, Statement of

Objectives, at 1.¹ The solicitation stated that award would be made to the best value offeror based upon the agency's evaluation of the following four factors: technical approach, organization and key personnel, past performance, and price. RFP at 55. The RFP established that the agency intended to make award without conducting discussions, but reserved the right to do so if necessary. Id. at 45, 60.

USAID received 38 proposals in response to the solicitation and established a competitive range among four of the offerors (including DGC). Contracting Officer's (CO) Statement at 1-2. The agency conducted discussions with the offerors in the competitive range and requested revised proposals. Id. Based upon USAID's evaluation of the revised proposals, the agency awarded a contract on August 30. On September 9, following the agency's notice of award and debriefing, DGC filed a protest with our Office challenging USAID's rejection of DGC's proposal and source selection decision. See DGC Int'l, Protest, Sept. 9, 2014.

On September 16, USAID informed our Office of its intent to take corrective action in response to DGC's September 9 protest. Notice of Corrective Action at 1. As part of its corrective action, the agency stated that it would reopen discussions with the offerors in the competitive range, request revised proposals, evaluate the revised proposals, and make a new selection decision. Id. On September 17, USAID canceled the contract award and reopened discussions with the four offerors in the competitive range. See, e.g., Agency Report (AR), Tab 17, DGC Discussions, Sept. 17, 2014. We dismissed DGC's protest as academic on September 18. DGC Int'l, supra. This protest followed.

DISCUSSION

DGC protests the agency's proposed corrective action, arguing that it does not remedy the procurement improprieties alleged in DGC's original protest, namely, that USAID's evaluation and source selection decision were biased (in favor of the awardee) and based on unstated evaluation criteria. See Protest at 2. The protester contends that the agency does not have a reasonable basis for reopening discussions and requesting further proposal revisions. Id.

In response to the protester's allegations, USAID states that, after receiving DGC's September 9 protest, the agency reviewed the procurement and determined that it may have conducted unequal discussions with offerors in the competitive range. AR at 3. Specifically, the contracting officer states that, during discussions, the agency advised only two of the four offerors in the competitive range of evaluated weaknesses in their technical proposal, but failed to similarly identify weaknesses in the other two offerors' (including DGC) proposals. See id.; CO's Statement at 2-3.

¹ Our references are to the conformed RFP.

As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 4. We generally will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. Where an agency has reasonable concerns that there were errors in the procurement, corrective action may appropriately include reopening discussions and requesting revised proposals before reevaluating. See, e.g., Consortium HSG Technischer Service GmbH and GeBe Gebäude-und Betriebstechnik GmbH Südwest Co., Management KG, B-292699.4, Feb. 24, 2004, 2004 CPD ¶ 44 at 3.

We see no basis to object to USAID's corrective action. In this regard, the record here supports the agency's assertion that it failed, during discussions, to identify technical weaknesses in DGC's proposal. Compare AR, Tab 11, DGC Discussions, Aug. 12, 2014, at 1-2 (explicitly identifying no discussion items with regard to DGC's technical approach and requesting only a revised cost proposal), with Tab 13, DGC Debriefing Questions, at 2-3 and Tab 17, DGC Discussions, Sept. 17, 2014 (identifying weaknesses in DGC's technical approach). Notably, the protester does not rebut (or address) the agency's assertion that it conducted unequal discussions, or that the agency failed, in its discussion letter, to identify weaknesses in DGC's technical proposal. See DGC Comments at 1-3. Thus, we conclude that the agency's corrective action was reasonable because it remedies the errors uncovered by the agency. See Mid Pacific Envtl., B-283309.2, Jan. 10, 2000, 2000 CPD ¶ 40 at 6 (GAO will not object to an agency's corrective action where the agency discovers an obvious error in the evaluation of offers and decides to correct the error by reassessing offers.)

The protester also asserts that the corrective action failed to address certain of the protester's original protest grounds. As stated above, the agency has cancelled the award, and will reopen discussions, request final proposals, and reevaluate revised proposals. Because the agency has not conducted its reevaluation of offers or indicated that the protester's offer will be excluded from award consideration, DGC's allegations merely anticipate prejudicial agency action and are, therefore, speculative and premature. See Computer Assoc. Int'l, Inc., B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157. We assume that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and our Office will not consider a protest allegation which speculates that an agency will not evaluate proposals in the manner set forth in the solicitation. Paramount Group, Inc., B-298082, June 15, 2006, 2006 CPD ¶ 98 at 6-7.

The protest is denied.

Susan A. Poling
General Counsel