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Comptroller General
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Decision

Matter of: Omega World Travel, Inc.

File: B-283218

Date: October 22, 1999

Barry Roberts, Esq., and Brian J. Hundertmark, Esq., Roberts & Hundertmark, for the protester.

James H. Roberts, III, Esq., Manatt, Phelps & Phillips, for Sato Travel, an intervenor.

John E. Lariccia, Esq., Department of the Air Force, for the agency.

Christina Sklarew, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Source selection official reasonably determined that proposal rated “blue/excellent” by four evaluators and “green/acceptable” by one evaluator should be rated “blue/excellent” overall for that evaluation factor; the overriding concern in the evaluation process is that the final score assigned accurately reflect the actual merits of the proposals, not that it be mechanically traceable back to the subjective scores initially given by the individual evaluators.

2. Where request for proposals provided for award without discussions, agency’s awareness of possible mistake in protester’s proposal pricing did not give rise to an obligation to conduct discussions to permit correction of mistake where the agency had received a technically equal, lower-priced proposal, and thus discussions were not otherwise necessary.

DECISION

Omega World Travel, Inc. protests the Department of the Air Force’s award of a contract for commercial travel services to Sato Travel under request for proposals (RFP) No. F62321-99-R0035. Omega alleges that there were improprieties in the agency’s evaluation of the proposals.

We deny the protest.

The RFP, issued on April 9, 1999, contemplated the award of a 1-year contract with four 1-year options for travel services to be provided at Kadena Air Base, Okinawa, Japan. The RFP provided, in section M, that the award would be made on the basis

of the best value to the government, and that proposals would be evaluated under the following three factors: understanding of the requirement, past performance, and discount fee. The discount fee was the most important factor in that the RFP provided for it to be weighted as approximately equal to the two other factors, combined.

Offerors were required to insert their discount fees in the solicitation schedule provided in section B of the RFP. The schedule called for the entry of air travel discount amounts for official travel, RFP § B, at 4-5, and leisure travel, RFP § B, at 6-7, and instructed offerors to submit discount fee amounts for the base year and each option year for each of these categories.¹ The schedule provided the following instruction, in relevant part, for both official and leisure travel:

The discount on airfares provided by the contractor is to be a percentage of the commissions paid to the contractor by suppliers of air transportation, based on total air official travel purchases.

RFP § B, at 4, 6.

The RFP stated in section M that the government intended to award the contract without discussions, citing Federal Acquisition Regulation (FAR) § 15.306, and advised offerors to submit initial proposals that were fully and clearly acceptable without additional information or explanation. RFP § M-2, at 52.

Sato submitted a number of questions to the agency by letter dated April 21. In one of those questions, Sato pointed out that item 2.2.8 of the RFP (at page 115) defines the “discount fee” for leisure travel as an “amount paid . . . [to the Air Force] stated as a percentage of total gross sales,” and that both this definition and the definition provided under “Specific Tasks,” RFP § C-5 (at page 126), refer to gross sales as the basis for the discount percentage and thus differ from the schedule in section B (as quoted above), which called for the leisure travel discount to be submitted as a “percentage of the commissions paid to the contractor.” Agency Report, Tab 20, Sato’s Questions for Clarification, at 1. The contracting officer responded, in a written clarification that was distributed to Omega and Sato, that “[t]he discount for leisure tickets is the percentage of the total gross sales. The up front reduction of the base fare should not be considered the discount.” Agency Report, Tab 18, Request for Clarification Responses, at 1. Thus, as clarified, the RFP treated official and leisure travel differently, with offerors asked to express their official travel

¹“Official travel” is defined in section C-2 of the RFP as travel authorized in connection with government business and paid for from appropriated funds, while “leisure travel” is defined as leave, furlough, vacation and other unofficial travel, which is paid for from personal funds by the traveler. RFP § C-2, at 63.

discounts as a percentage of the commission paid by the carrier and their leisure travel discounts as a percentage of gross sales revenue.

Sato and Omega submitted offers by the May 3 closing date for receipt of proposals. A five-person source selection evaluation team (SSET), with the contracting officer acting as its chief and evaluation facilitator, evaluated each of the proposals. The evaluators scored the proposals under a color-coded rating system, assigning a rating of blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable under each evaluation factor. The SSET chief prepared a proposal analysis report, based on the individual evaluators' ratings and evaluation narratives. The source selection authority reviewed this report to perform a comparative assessment of the proposals, culminating in his source selection decision.

Under the factor of understanding of the requirement, Omega's proposal received a blue/exceptional rating from each evaluator, while Sato's received four blue/exceptional ratings and one green/acceptable rating. Both proposals were given an overall rating of blue/exceptional for this factor. Under past performance, both offerors were rated as presenting a low risk. Agency Report, Tab 12, Proposal Analysis Report, at 2. Omega proposed discounts of [deleted] percent for official travel and [deleted] percent for leisure travel, while Sato proposed discounts of [deleted] percent for official travel and [deleted] percent for leisure travel. The contracting officer (acting as the SSET chief) concluded that Sato's proposal offered the best value to the government, based on its excellent technical rating and its [deleted] discount fee.² *Id.* at 3. The source selection authority agreed that the two proposals were equal in technical merit, therefore price should be the discriminating factor, and that Sato should receive the contract award. Agency Report, Tab 10, Source Selection Decision, at 2. Award was made on July 1, and notification to the two offerors followed on July 7. Omega requested and received a written debriefing, and this protest followed.

Omega protests that Sato's proposal should not have received the highest possible rating of blue/exceptional for the understanding of the requirement evaluation factor because it did not receive that rating from every individual evaluator; and that the [deleted] difference in the discount fees that Omega and Sato offered for official travel should have alerted the contracting officer to the possibility of a mistake in

²Based on the nature of the travel involved, it is to be expected that the major portion of the dollar volume of services provided under the contract will fall under the provision of official, rather than leisure, travel services. The RFP workload estimates list \$8.1M for official air travel, RFP, Technical exh. 1.2a, at 85, and \$4M for leisure services, RFP, Technical exh. 2.2, at 135.

Omega's offer, thereby obligating the contracting officer to seek clarification from Omega.³

With respect to the technical evaluation of Sato's proposal, Omega argues that because one of the five evaluators rated Sato's proposal green/acceptable for technical understanding, while all five evaluators rated Omega's proposal blue/exceptional for this factor, the contracting officer could not reasonably assign both proposals the same overall rating of blue in this area. Omega characterizes this as "ignor[ing] and effectively throw[ing] out the rating of one evaluator simply because [the contracting officer] likes one of the bidders," and "arbitrarily equaliz[ing] two unequal scores." Protester's Comments at 2.

The record supports the reasonableness of the contracting officer's evaluation assessment. Contrary to the protester's assertions, a finding of technical equality need not be based on strict equality in terms of each evaluator's rating for each factor, or even point scores. N W Ayer Inc., B-248654, Sept. 3, 1992, 92-2 CPD ¶ 154 at 4. The significance of a given point spread or difference in rating depends upon all the facts and circumstances surrounding a given procurement; the scores themselves are not controlling, reflecting as they do the disparate subjective judgments of evaluators, but are useful as guides to intelligent decisionmaking. Earle Palmer Brown Cos., Inc., B-243544, B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ 134 at 10. Even if the contracting officer had assigned Sato's proposal a "blue minus" rating and had assigned Omega's proposal a "perfect blue" for this factor, as the protester would require, Protester's Comments at 2, the contracting officer would still have retained the discretion to determine whether these ratings actually represent any significant difference between the two proposals. See M. Rosenblatt & Sons, B-230026, B-230026.3, Apr. 26, 1988, 88-1 CPD ¶ 409 at 3-4. The overriding concern in the evaluation process is that the final score assigned accurately reflect the actual merits of the proposals, not that it be mechanically traceable back to the scores initially given by the individual evaluators. Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151 at 11. Here, the record reflects that each of the evaluators identified strengths in Sato's proposal in this area, and that the following was listed on the Proposal Evaluation Report summary as a weakness:

Only possible weakness identified was the number of [deleted], contractor may want to increase [deleted]. However, the contractor may have [deleted] not being used by the current contractor or other [deleted] ideas that allow for a [deleted].

³ Although Omega also initially protested that the contracting officer's determination of best value based on the discount fee constituted plain error, Protest at 3, it did not rebut the agency's position in its comments. We therefore consider Omega to have abandoned this basis of protest. Akal Sec., Inc., B-261996, Nov. 16, 1995, 96-1 CPD ¶ 33 at 5 n.5.

Agency Report, Tab 12, Proposal Analysis Report, attach., PAR Evaluation Summary Matrix, SATO Travel, at 1.

The record simply does not support the protester's assertion that "the contracting officer determined that the lack of [deleted] is a significant weakness in Sato Travel's proposal" Protest at 2. The concern was not shared by four of the five evaluators, and was noted in the proposal analysis report only as a "possible weakness." Agency Report, Tab 12, Proposal Analysis Report, attach., PAR Evaluation Summary Matrix, SATO Travel, at 1. In these circumstances, where the SSET listed a number of strengths under this evaluation factor, and only one evaluator gave the proposal a green rating for this one factor, we have no basis to find the overall blue rating for Sato's proposal unreasonable; on the contrary, we think the blue rating was reasonably justified by the significant strengths that the evaluators noted in Sato's quality control plans, such as [deleted], and Sato's proposed [deleted], which was considered exceptional. Contracting Officer's Statement at 3.

Regarding the disparity between the two offerors' levels of discount fees for official travel, we find without merit Omega's premise that the contracting officer was required to seek clarification because he should have recognized the possibility that Omega's offer was based on a mistake. Omega states that its proposed [deleted] percent discount is expressed as a percentage of gross sales, Protester's Comments at 2, while Sato's [deleted] percent discount represents a percentage of commission revenue. Except for leisure travel (where the RFP clarification stated discounts were to be based on gross sales), the RFP clearly states that the discount "is to be a percentage of the commissions paid to the contractor." RFP § B, at 4. Omega's failure to comply with the explicit instructions for submitting its official travel discount fee percentage falls short of its responsibility as an offeror to submit an adequately written and complete proposal. Cubic Field Servs., Inc., B-252526, June 2, 1993, 93-1 CPD ¶ 419 at 5.

Where, as here, a mistake in an offer other than the awardee's offer is first alleged after award, the general rule is that the unsuccessful offeror must bear the consequences of its mistake unless the contracting officer was on actual or constructive notice of an error before award. PAE GmbH Planning and Constr., B-233823, Mar. 31, 1989, 89-1 CPD ¶ 336 at 3. Omega asserts that the magnitude of the difference in the two offerors' discount fees should have provided constructive notice of the mistake, and that the contracting officer should have sought clarification from Omega. In this connection, the agency report acknowledges that "[a]fter comparison, the evaluators did note the apparent spread of the proposed discount fees." Contracting Officer's Statement at 4. However, Omega's alleged improper pricing of its proposal does not present the type of mistake which could be corrected through clarifications, nor was the agency required to conduct discussions in order to correct the mistake. The alleged error is not a minor irregularity or

apparent clerical mistake, such that correction could be made by asking Omega to clarify this aspect of its proposal, without conducting discussions. See Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76 at 5-6. As provided by FAR § 15.306(a), “clarifications” are limited exchanges between the government and offerors that may occur when award without discussions is contemplated. Such communications with offerors are not to be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. Cf. FAR § 15.306(b)(2). Further, correction without discussions is not appropriate here because the discount that Omega allegedly intended cannot be clearly and convincingly ascertained from the RFP and the proposal itself. See Matrix Int’l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 13. Although Omega states that the discount percentage it offered would actually provide a higher discount than Sato’s offer, Protester’s Comments at 2, Omega never provides any calculations or other basis to verify this assertion, and nothing in the record provides any evidence of a direct relationship between the discount Omega proposed in its offer and the discount that it allegedly intended. Thus, any correction of the mistake would require the agency to conduct discussions with both offerors, and here the RFP provided that award would be made without discussions. There generally is no obligation that a contracting agency conduct discussions where the RFP specifically instructs offerors of the agency’s intent to award a contract on the basis of initial proposals. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11; FAR § 15.306(a)(3). The contracting officer’s discretion in deciding not to hold discussions is quite broad. Our Office will review the exercise of such discretion only to ensure that it was reasonably based on the particular circumstances of the procurement. Robotic Sys. Tech., supra.

We find no circumstances here that call into question the agency’s decision not to engage in discussions. Contrary to the protester’s assertions, the fact that its proposal may have contained a mistake does not give rise to an obligation on the agency’s part to hold discussions where discussions are not otherwise necessary. Since the agency had properly determined both that Sato had submitted an initial proposal that was technically acceptable and that its offered low price was fair and reasonable, there is no basis for us to object to the Air Force’s determination to make award without discussions. Cornet, Inc.; Datacomm Management Servs., Inc., B-270330, B-270330.2, Feb. 28, 1996, 96-1 CPD ¶ 189 at 7.

The protest is denied.

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