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Decision

Matter of: Olympus Building Services, Inc.

File: B-285351.3

Date: May 31, 2001

Ruth E. Ganister, Esq., Rosenthal & Ganister, for the protester.

Mark E. Warnick, Esq., General Services Administration, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging several aspects of evaluation of protester's proposal is denied where agency reasonably downgraded protester's proposed personnel training program; protest regarding remaining evaluation areas is academic, since awardee would remain in line for award even if protester's proposal were awarded the maximum points possible under each of those areas.

DECISION

Olympus Building Services, Inc. protests the evaluation of its revised proposal, and the award of a contract to Mitch Murch's Maintenance Management Company (MMMM) under request for proposals (RFP) No. GS06P-99-GXC-0021, issued by the General Services Administration (GSA) for janitorial and related services at the Thomas F. Eagleton Courthouse, St. Louis, Missouri. Olympus principally maintains that the agency did not properly evaluate its proposal.

We deny the protest.

The solicitation, initially issued on September 16, 1999, contemplated the award of a fixed-price contract for a base year, with four 1-year options. Based on the evaluation, Olympus's proposal was eliminated from the competitive range. Olympus challenged the evaluation of its proposal in a protest to our Office. In our decision Olympus Bldg. Servs., Inc., B-285351, B-285351.2, Aug. 17, 2000, 2000 CPD ¶ 178, we sustained the protest, finding that GSA improperly had applied undisclosed standards in evaluating proposals. We recommended that the agency amend the solicitation to provide a rational and reasonably disclosed evaluation scheme, request and evaluate revised proposals and make a new source selection decision.

In response to our decision, the agency issued an amendment that, among other things, revised sections L and M of the solicitation. Revised section M identified five evaluation factors—experience, past performance, staffing and training, cost control and resources, and quality control—and advised offerors that the combined weight of the technical factors was more important than price, RFP amend. 6 (RFP), §§ M.2.a, M.2.b, and that GSA intended to make award without discussions. RFP § M.2.c. Revised section L provided descriptions/explanations of each of the evaluation factors, and listed standards of evaluation the agency would apply in evaluating proposals under each factor. RFP § L.2.

Seven proposals were received by the October 27 closing date. Agency Report (AR) at 2. Members of the source selection evaluation board (SSEB) individually evaluated the proposals; the evaluators documented and discussed the strengths and weaknesses of each proposal and, in internal discussions, reached a consensus regarding final evaluation ratings. AR, Tab 12, SSEB Scores and Notes, at 1-42. Based on the consensus, the evaluators rated the proposals under each technical factor using adjectival ratings and corresponding point values. Based on this evaluation, four proposals were rated unacceptable, two, including Olympus's (575 of 1,000 possible points) were rated poor, and MMMM's (948 points) was rated excellent.¹ AR, Tab 14, SSEB Report, at 1. Olympus's evaluated price was \$6,063,527, and MMMM's \$5,655,288. Contracting Officer's Statement at 12. The agency determined that there was a clear delineation between MMMM's proposal and the next two highest-rated proposals, and that award therefore should be made without establishing a competitive range. AR, Tab 14, SSEB Report, at 26. The agency notified offerors of its intent to award a contract to MMMM and, after receiving a written debriefing, Olympus filed this protest with our Office.

Olympus challenges the evaluation of its revised proposal under several factors under which its proposal was significantly downgraded: experience (135 of 240 possible points), quality control (35 of 120), and resources and cost control (70 of 200), and also under the training subfactor (40 of 100). Protester's Comments at 3-15. Olympus also argues that the evaluation deviated from the stated evaluation scheme under the experience and cost control factors. Protester's Supplemental Comments at 4-5.

In reviewing protests against the propriety of an evaluation of proposals, we will review the record to ensure that the evaluation was fair and reasonable and consistent with the criteria stated in the RFP. Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129 at 4; Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93 at 3. We find that the protester's

¹ The source selection plan provided that proposals with total scores of 900 or more would be rated excellent, 800 to 899 good, 500 to 799 poor, and at or below 499 unacceptable. AR, Tab 12, Source Selection Plan, at 9.

arguments do not provide a basis for sustaining the protest. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Trauma Serv. Group, B-254674.2, Mar. 14, 1994, 94-1 CPD ¶ 199 at 6; see Statistica, Inc. v. Christopher, 102 F3d 1577 (Fed. Cir. 1996). Here, because of the large discrepancy in technical scores, Olympus's score would move above MMMM's only if we agreed that its proposal was misevaluated under all four challenged criteria, and that it should have received all possible points under those criteria; this would result in a score of 955 for Olympus, compared to MMMM's 948. This being the case, once any one of Olympus's arguments fails, MMMM's technical rating would remain superior, and Olympus would not be in line for award. Myers Investigative and Sec. Servs., Inc., B-286971.2, B-286971.3, Apr. 2, 2001, 2001 CPD ¶ 59. Therefore, since we find that the evaluation under the training subfactor was reasonable, we need consider Olympus's evaluation challenge only with regard to that subfactor, which we discuss below.

Under the training subfactor, offerors were required to describe in detail their training program for all personnel. RFP § L.2C(b). Section L specifically stated that, in order to meet the standard of evaluation under this subfactor, an offeror's description of its training program "shall include" the method of training to be used (for example, orientation, on-the-job, classroom, or computed-aided), the individuals responsible for the training, the frequency of the training, and the type of training (for example, safety, processes, new products, technology and equipment, customer service/relations, and floor care). Id.

GSA downgraded Olympus's proposal (40 out of 100 points) on the basis that it did not include methods or frequency of training, and did not identify the individuals responsible for training, contrary to the express terms of the solicitation.

Olympus argues that GSA's conclusions "are not supported," Protester's Comments at 8, and that the downgrading therefore was unwarranted. For example, Olympus argues that its proposal "indicates that initial [DELETED] programs are given to all employees and that [DELETED] training programs are provided to all employees." Id. The protester suggests that, since its training personnel would not be hired until after contract award, it could not provide the specific names of these individuals, with the exception of its president. It notes, however, that the proposal specified that the [DELETED] would have primary responsibility for training supervisory personnel and that [DELETED] and [DELETED] would assist with the orientation training. Protester's Comments at 9.

The evaluation under this subfactor was reasonable. Our review of Olympus's proposal shows that, as the agency concluded, Olympus provided no information on its training methods; in its comments on the agency's report, Olympus does not dispute this. Similarly, the proposal did not set forth a training schedule or indicate

how frequently training was to be provided. While Olympus asserts that its training was to be “continuous,” its proposal did not specifically state that this was to be the case. The proposal used the term “continuous” only once, in the purpose statement for custodial training (stating that the purpose of its “[DELETED] Training Programs is to provide each employee with in-depth understanding of their duties and responsibilities”). AR, Tab 3, Olympus Proposal, at 35. The proposal did not state that training for its managers was to be continuous, or otherwise indicate the frequency of this training; the proposal stated only that all newly hired supervisory staff or promoted or transferred personnel will be provided “with an orientation of their job description” prior to performing their duties. Id. at 31. As for safety and accident training, the proposal indicated only that safety and accident prevention procedures would be presented during employee orientation, before the contract start date. Id. at 40.

Finally, the proposal did not identify all the trainers who would conduct the training. While Olympus noted that it would need [DELETED] instructors for its orientation program, including on-site and phase-in management personnel, the president and the operations manager, Olympus did not identify trainers for its management, custodial or safety and accident training. Rather, the proposal indicated only that the project manager would have responsibility under management training for “implementing” job training and training supervisors in company reporting procedures. Id. at 31, 33. The proposal also indicated that the project manager would “implement” the custodial training program, and that the operations manager and other supervisors would assist the project manager. Id. at 36-37. There was no indication in the proposal that “implementing” included actual training, and the job responsibilities listed for project manager, operations manager, and other supervisors did not specify that these employees would conduct training. No trainers were identified for the safety and accident training. To the extent Olympus complains that it could not identify training personnel because they were not to be hired until after award, the protest is untimely. The solicitation specifically required offerors to identify the “[i]ndividuals responsible for conducting training.” RFP § L.2C(b). If Olympus objected to this requirement, it was required to protest on this ground prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2001). We conclude that there is no basis to object to the evaluation of Olympus’s proposal under the training subfactor.

Since Olympus cannot improve its technical score under the training subfactor, its technical standing would remain below MMMM's even if its other arguments were successful. Since MMMM's evaluated price also was lower than Olympus's, that firm was entitled to award.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² Olympus initially protested that the agency had improperly evaluated its price; however, Olympus withdrew this ground of protest after receiving the agency's explanation of its price computations in the agency report. Protester's Comments at 15. In supplemental comments filed on April 30, Olympus asserted for the first time that the agency's alleged deviation from the RFP's evaluation scheme could have "skewed" the awardee's and other offerors' evaluations. Protester's Supplemental Comments at 9. Even if we considered this general, speculative assertion to be a viable protest ground, because it was raised more than 10 days after Olympus argued (in its April 10 comments on the agency report) that the agency had deviated from the evaluation scheme, it would be untimely. 4 C.F.R. § 21.2(a)(2).