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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: SOS Interpreting, Ltd.

File: B-287477.2

Date: May 16, 2001

J. Patrick McMahon, Esq., and William T. Welch, Esq., Barton, Baker, McMahon & Tolle, LLP, for the protester.

J. Michael Sawyers, Esq., Drug Enforcement Administration, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency was not required to conduct discussions with protester aimed at lowering its proposed price below the awardee's, even though award was ultimately based on lowest price, where agency determined that protester's price was reasonable and comparable to other offerors' prices.

2. Allegation that evaluation of proposals was flawed is denied where, although the agency applied unequally weighted evaluation subfactors, in view of the minimal differences between the assumed equal weights and actual weights assigned, and the protester's high total price, there is virtually no possibility that the protester was prejudiced in the evaluation.

DECISION

SOS Interpreting, Ltd. (SOS) protests the award of a contract to Comprehensive Technologies, Inc. (CTI) under request for proposals (RFP) No. DEA-00-R-0013, issued by the Drug Enforcement Administration (DEA) for translation and technical support services. SOS argues that the agency did not conduct meaningful discussions with the firm regarding its proposed price, and maintains that the agency improperly applied unequally weighted evaluation subfactors.

We deny the protest.

The RFP, issued on April 14, 2000, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base year with up to four 1-year option periods. RFP §§ B.2, B.8, L.4. Offerors were required to submit proposals in

separate volumes--a technical proposal and a business management proposal. Id. § L-6.1(3). For each contract period, offerors were required to submit unit and extended hourly labor rates for estimated quantities of 12 different labor categories. Id. amend. No. 4, § B. The RFP listed the following technical evaluation factors (maximum possible number of points for each factor shown in parentheses): furnishing qualified personnel (35), quality control plan (25), management plan (10), subcontracting plan (10), and past performance/risk assessment (20), for a maximum possible total of 100 points. Id. § M.5. Although price was not to be numerically scored, the RFP explained that its degree of importance would increase as proposals were considered equal in relation to technical factors. Id. § M.4.B, at M-3. The RFP stated that technical factors combined were substantially more important than price. Id. § M.2.B. Award was to be made on the basis of the proposal deemed to represent the best value to the government. Id. § M.2.A.

Nine firms, including SOS and CTI, responded to the RFP by the time set on June 21, for receipt of proposals. On July 10, the agency convened a technical evaluation panel (TEP) to evaluate technical proposals. Prices were separately evaluated. The contracting officer (CO) determined that the TEP's initial evaluation was inadequate, set aside these evaluations, and convened a different panel to evaluate proposals. CO Statement, Apr. 26, 2001, at 4. Based on the results of these evaluations, the CO excluded three proposals from further consideration, established a competitive range comprised of the remaining six proposals, conducted discussions with these six firms, and requested and received final proposal revisions (FPR). The TEP reevaluated proposals based on FPRs. The following table shows the results of the final evaluations.

Offeror	Pers.	Qual. Cont.	Mgmt. Plan	Sub. Plan	Past Perf.	Total Score	Price
CTI	33	24	7	9	18	91	\$26,872,408
A	33	24	8	8	16	89	28,616,442
B	33	22	9	8	20	92	29,399,225
C	33	23	9	9	19	93	30,154,638
D	33	23	9	9	16	90	30,635,358
SOS	32	22	9	9	15	87	31,442,927

Agency Report (AR), exh. 5, Final Technical Evaluation Report, Jan. 31, 2001; exh. 8 Price Analysis.

Based on the results of the final technical and price evaluation, the CO awarded the contract to CTI. This protest followed a debriefing.

SOS argues the agency failed to conduct meaningful discussions because, except for raising questions regarding the prices of SOS's proposed subcontractors, DEA never advised SOS that its price was too high. SOS argues that it was prejudiced by the agency's allegedly flawed discussions because, since the CO selected CTI primarily on the basis of that firm's lower price, DEA should have informed SOS during

discussions that its total price was higher than CTI's. This argument is without merit.

Under Federal Acquisition Regulation (FAR) § 15.306(e)(3), "the [CO] may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion." This language clearly gives the CO discretion to inform the offeror that its price is too high, but does not require that the CO do so, especially where, as here, the agency does not consider the price a significant weakness or deficiency that the offeror could alter or explain to enhance the proposal's potential for award. National Projects, Inc., B-283887, Jan. 19, 2000, 2000 CPD ¶ 16 at 5; see also KBM Group, Inc., B-281919, B-281919.2, May 3, 1999, 99-1 CPD ¶ 118 at 8-9 (agency did not mislead protester during discussions, even though award was ultimately made based on price and agency did not inform protester that its price was higher than awardee's price, where agency did not believe that protester's price was too high for the approach taken).

Here, the record shows that the agency conducted a price analysis of proposed prices pursuant to FAR § 15.404-1(b)(2), and determined that SOS's price was reasonable—a determination that SOS does not contest. Specifically, a comparison of all offerors' direct labor rates for all labor categories revealed that they were all competitive and comparable. Further, although the CO recognized in her analysis that CTI proposed lower labor rates for some categories than other offerors, she determined that all offeror's rates were comparable. See AR exh. 8, Price Analysis, Feb. 23, 2001. Since the CO reviewed proposed prices and determined that SOS's price was competitive and not unrealistically high, DEA had no duty to advise SOS during discussions that its price was high compared to that of CTI's.¹ See Cherokee Info. Servs., B-287270, Apr. 12, 2001, 2001 CPD ¶ ____.

SOS argues that the evaluation of its proposal in the past performance area was improper based on the unequal weighting of the subfactors. In evaluating proposals under this factor, the TEP applied the following three subfactors and weights—relevancy (10 points), performance improvements (5 points), and past performance surveys (5 points). The protester contends that since the RFP did not list the subfactors' relative weights, offerors were entitled to assume that they would be considered of equal in importance. The protester maintains that it was prejudiced in the evaluation because it would have prepared its proposal differently had it known of the actual weighting scheme the TEP applied.

¹ To the extent that SOS argues that discussions concerning its price were ambiguous, its argument is meritless. The record shows that during oral discussions, SOS "was reminded that this was a competitive environment and that proposed pricing was considered high." AR exh. 7, CO's Memo to File, Dec. 8, 2000. SOS apparently ignored DEA's reminder and increased its total price more than \$350,000 in its FPR.

SOS is correct that, where the relative weights of subfactors are not disclosed in the RFP, the subfactors are understood to be of equal importance to each other. North-East Imaging, Inc., B-256281, June 1, 1994, 94-1 CPD ¶ 332 at 2. However, competitive prejudice is an essential element of every viable protest. Geonex Corp., B-274390.2, June 13, 1997, 97-1 CPD ¶ 225 at 4. 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; see Statistica, Inc. v. Christopher, 102 F.3d. 1577, 1581 (Fed. Cir. 1996).

Although SOS asserts that it was competitively prejudiced as a result of the agency's unequal weighting of the past performance subfactors, it is not apparent how different weights would have affected the manner in which SOS prepared its proposal. In particular, there is no reason to believe that SOS would have provided any more or different information concerning its performance history had the agency applied equal weights to the subfactors. Moreover, the point differences between the actual evaluation weighting of the three subfactors and the equal weighting assumed by the protester (6.66 points for each subfactor), in the assessment of past performance, is so minimal that this difference, when considered with SOS's high price, renders the potential for prejudice virtually nonexistent. In fact, had the TEP weighted the past performance subfactors equally, SOS's proposal would have earned 13.98 points in this area, while CTI's proposal would have earned 17.32 points.² The relative standing of the protester's and the awardee's proposals, therefore, would remain unaffected.

The protest is denied.

Anthony H. Gamboa
General Counsel

² We calculated these scores by converting the actual scores assigned the proposals for each past performance subfactor to their equivalent of the assumed weights. SOS's proposal earned 9, 4, and 2 points, for the past performance subfactors, respectively. Assuming equal weights, these scores convert to 5.99, 5.33, and 2.66 points, for a total score of 13.98 points for past performance. CTI's proposal earned 10, 4, and 4 points in this area, which convert to 6.66, 5.33, and 5.33 points, for each of the three subfactors, for a total score of 17.32 points for past performance.