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of the United States

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Decision

Matter of: Uniband, Inc.

File: B-289305

Date: February 8, 2002

John E. Jensen, Esq., and Daniel S. Herzfeld, Esq., Shaw Pittman, for the protester.
Robert J. Sherry, Esq., Kirkpatrick & Lockhart, for ACS Government Services, Inc.,
an intervenor.

Elizabeth Gaffin, Esq., Department of Justice, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's post-protest reevaluation of one aspect of price realism of awardee's quote will be considered and weighed appropriately by the General Accounting Office in rendering its decision, where the agency conceded its error, the reevaluation was limited in scope (given that much of the agency's initial price realism evaluation was unobjectionable), and the reevaluation primarily required only the application of rather simple arithmetic calculations.
2. Agency's determination that awardee's quote was reasonable and realistic with regard to price is unobjectionable where the agency's price evaluation was relatively detailed and applied a variety of price analysis techniques and considered, among other things, the awardee's proposed approach to accomplish the work required and familiarity with the work as the result of the awardee having served as the incumbent subcontractor; fact that the agency's initial price realism analysis was flawed in one respect does not render the agency's determination unreasonable where this problem was reasonably addressed in a reevaluation performed during the course of the protest and the other aspects of the price analysis supported the agency's determination.
3. Agency conducted meaningful discussions where it brought its principal concerns about the protester's quote to the protester's attention; the agency was not required to inform the protester that its proposed price was high relative to the awardee's where the agency did not consider the protester's proposed price excessive or unreasonable.

DECISION

Uniband, Inc. protests the award of a blanket purchase agreement (BPA) to ACS Government Services, Inc. under request for quotations (RFQ) No. COW-1-Q-1136, issued by the Immigration and Naturalization Service (INS), Department of Justice, for services in support of the non-immigrant information system (NIIS) and the student/school system (STSC). Uniband argues that the agency unreasonably determined that ACS's price was realistic and that the agency failed to conduct meaningful discussions.

We deny the protest.

The NIIS and STSC are on-line automated information systems used by the INS and other federal agencies to track and control the recorded entry and departure of non-immigrants to and from the United States. As explained in the RFQ, non-immigrants are aliens who enter the United States for a specified period of time to accomplish a particular objective, such as taking a vacation, attending a university or college, or completing a business trip. The NIIS contains arrival, departure, and other information regarding non-immigrant aliens entering or leaving the United States, while the STSC contains "information regarding the various schools authorized to enroll non-immigrants and individual information on the non-immigrants currently attending these schools." According to the RFQ, the contractor will be required to provide all services "needed to collect, capture, process, and transmit the required data" to be stored in the NIIS and STSC, with the primary deliverables under the contract being "electronic records" developed from completed forms. RFQ at 4-5.

The RFQ provided for the award of a single BPA, for a base year with 4 option years, to the vendor holding a current General Services Administration (GSA) Federal Supply Schedule (FSS) contract under the information and technology schedule. RFQ at 6, 9, 14. The solicitation stated that the award would be made to the vendor whose quote represented the best value to the government, and listed the following evaluation factors in descending order of importance: technical approach, past performance, and price. RFQ at 14, 28-30.

The RFQ specified that each vendor's price would "be evaluated for price reasonableness and cost realism, as well as total evaluated price." The solicitation recognized here that while the vendors' GSA FSS prices had been deemed fair and reasonable, any proposed discounts from those prices which resulted in quotes that were "unrealistically low in cost(s) [e.g., unrealistic base rates for one or more labor categories] and/or price will be deemed to show an inherent lack of technical competence or failure to comprehend the complexity and risk of the BPA requirements." In this regard, the RFQ specifically informed vendors that the agency "may conduct its price analysis using one or more of the techniques specified in

[Federal Acquisition Regulation] FAR [§] 15.404-1(b) or other means and its realism analysis in accordance with FAR [§] 15.404-1(d).” RFQ amend. No. 0003 at 3.

The RFQ included detailed instructions for the preparation of quotes, and requested that price submissions include “all information necessary to allow for a comprehensive evaluation of the discounts proposed by the [vendor].” The solicitation specified here that the price submission should include “pricing tables and an accompanying narrative that fully describes all assumptions made and conditions stipulated by the [vendor].” The RFQ added that the “[p]ricing [t]ables [would] serve as the mechanism by which the INS [would] order services from the successful [vendor].” RFQ at 24-26.

The agency received quotes from Uniband (the incumbent contractor) and ACS (Uniband’s subcontractor on the incumbent contract). The submissions of Uniband and ACS were evaluated as “good” under the technical factor, with total proposed prices of \$88,248,752 and \$73,781,361, respectively.¹ AR vol. 10, Initial Technical Evaluation Committee (TEC) Report, at 12, 17; Initial Business Evaluation Committee (BEC) Report, at 4. The agency also performed a price realism analysis of the vendors’ submissions, and while it found ACS’s price submission reasonable and realistic, it concluded that Uniband’s price submission was inconsistent with the terms of the solicitation, and that Uniband’s proposed rates could not, in some instances, be properly analyzed.² AR vol. 10, Initial BEC Report, at 6-25.

Both Uniband’s and ACS’s quotes were included in the competitive range, and the agency conducted discussions with the vendors. AR at 16. Revised quotes were requested and received from the vendors. Uniband’s and ACS’s quotes were evaluated as “good” under the technical and past performance factors, at proposed prices of \$93,868,008 and \$73,788,361, respectively. The agency determined that ACS’s quote represented the best value to the government. AR vol. 10, Best Value Determination. This protest followed.

Since the RFQ provided for the issuance of a BPA against the selected vendor’s GSA FSS contract, the provisions of FAR Subpart 8.4 apply. Those provisions anticipate that agencies will review the federal supply schedules and place an order directly with the schedule contractor that can provide the supplies or services that represent the best value and meet the government’s needs. FAR § 8.404(b)(2); Labat-Anderson, Inc., B-287081 et al., Apr. 16, 2001, 2001 CPD ¶ 79 at 5. Where an agency intends to use the FSS vendors’ responses to a solicitation as the basis of a detailed technical

¹ The agency did not evaluate the vendors’ past performance at this time because not all of the responses from the vendors’ references had been received. Agency Report (AR) at 12.

² Uniband corrected these problems in its revised price submission.

evaluation and price/technical tradeoff, it may elect, as INS did here, to use an approach that is like a competition in a negotiated procurement. When an agency takes such an approach, and a protest is filed, we will review the protested agency actions to ensure that they were reasonable and consistent with the terms of the solicitation. Labat-Anderson, Inc., *supra*. Here, the record establishes that INS treated the vendors' responses as if it were conducting a negotiated procurement. Accordingly, while the provisions of FAR Part 15, governing contracting by negotiation, do not directly apply, we analyze Uniband's contentions by the standards applicable to negotiated procurements. Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 6.

In its protest, Uniband first argues that ACS's price is not realistic, and that if the agency had performed a reasonable "cost realism analysis," it would have "rejected" ACS's quote as "unrealistically low." Protest at 10.

As stated above, the solicitation provided that the vendors' prices would "be evaluated for price reasonableness and cost realism, as well as total evaluated price." RFQ amend. No. 0003 at 3. The concept of cost realism generally applies to cost-reimbursement contracts, where it is important for the government to measure the likely cost of performance before choosing among competitors in the procurement. Cost realism is ordinarily not considered in the evaluation of submissions for a contract to be awarded on a fixed-price basis, such as the one involved here, since a fixed-price contract provides for a definite price, which places the risk and responsibility for all contract costs and resulting profit or loss upon the contractor. Acepex Mgmt. Corp., B-279173.5, July 22, 1998, 98-2 CPD ¶ 128 at 6.

Here, even though the RFQ stated that quotes would be evaluated for "cost realism," the RFQ provided for award on a fixed-price basis and for the "cost realism" analysis under the "price evaluation factor," and did not require the submission of cost data (such as indirect rates). Therefore, and consistent with the nature of a fixed-price contract, it is clear that the "price evaluation factor" cannot reasonably be viewed as contemplating other than the performance of a price analysis to ascertain whether the offered prices were reasonable and realistic. Acepex Mgmt. Corp., *supra*, at 7; see Labat-Anderson, Inc., *supra*, at 8. The nature and extent of an agency's price realism analysis are matters within the agency's discretion, and our review of an agency's price realism evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. Labat-Anderson, Inc., *supra*.

In this case, as mentioned previously, the solicitation included pricing tables to be completed by the vendors. RFQ at 26. These pricing tables set forth 16 contract line items (CLIN) for each year, some of which included sub-CLINs. The CLINs (and sub-CLINs) generally provided the type of transaction involved, a description of the document to be generated under the CLIN or sub-CLIN if applicable, the applicable "unit," and an estimated quantity, and required that the vendor provide a

unit and extended price. For example, sub-CLIN 0001AB described the type of transaction as “Arrival Documents,” the document as an “Automated I-94,” the unit as a “form,” and the estimated quantity of the forms to be generated under this sub-CLIN as 15,000. Accordingly, each vendor was required to complete this sub-CLIN by providing a unit price for processing each of these forms, and an extended price based upon the total estimated quantity. RFQ attach. 3, Pricing Tables.

The RFQ explained that merely completing the pricing tables was not acceptable and that vendors should include in their price submissions “a comprehensive narrative discussion/explanation of all of the assumptions made in developing the proposal and to explain the rationale for the structure of the Price Proposal.” The RFQ added here that each vendor “must explain the rationale for the production or processing time for the CLINs for which this is applicable,” and state its “[a]ssumptions and constraints affecting price (e.g., economic, cost, and technical).” The RFQ further stated that each vendor “must show how it derived its proposed price for each CLIN from the Offeror’s or team member’s GSA Schedule, and describe how the various GSA Schedule line items are bundled to arrive at the overall proposed price for a given CLIN.” In this regard, the vendors were required to provide spreadsheets, “which show mathematically how the Offeror’s prices for individual labor categories or items on the GSA Schedule(s) are combined to arrive at the unit price for each CLIN.” RFQ at 25-26.

The agency evaluated the vendors’ price submissions by comparing the proposed total prices to each other, comparing the information in the price submissions with competitive published price lists or similar indexes, comparing the prices by task area with the independent government cost estimate, and by otherwise analyzing the price information set forth in the submissions. AR vol. 10, Initial BEC Report, at 4-5; Final BEC Report, at 5. The agency also calculated “benchmark” loaded labor rates for each of the categories of labor set forth in each vendor’s submission, and compared the vendors’ proposed “discounted” labor rates to the benchmark rates developed by the agency.³ AR at 13-14; vol. 10, Initial BEC Report, at 5-6. With

³ The agency explains that it calculated its benchmark rates “for labor categories exempt and not exempt from the Service Contract Act (SCA)” by first determining base rates using the applicable “[w]age [d]eterminations . . . for SCA nonexempt labor categories” and “commercial salary surveys available at www.salary.com” for exempt labor categories. The agency then applied “a multiplier or burden of 1.5 to adjust the rates for minimum indirect costs,” which took into consideration health and welfare benefits, unproductive overtime, general and administrative expenses, overhead, and a [DELETED] percent profit or fee. AR at 13; vol. 10, Initial BEC Report, at 5. Although Uniband initially protested that the agency’s benchmark rates were unrealistically low, the agency report responded in detail to this argument, and the protester did not respond to the agency’s position in either its comments or its
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regard to ACS's submissions, the agency found the prices realistic in part because ACS's proposed discounted rates exceeded the benchmark rates. AR vol. 10, Initial BEC Report, at 10.

Uniband argues that the agency's price realism analysis of ACS's submission was flawed. Specifically, Uniband points out that when evaluating ACS's price submission, the agency thought that it was considering ACS's rates for each of the four labor categories set forth in ACS's submission, as discounted from its GSA schedule rates. However, Uniband contends, and the record reflects, that the agency, in performing the price realism analysis, actually "only evaluated ACS's actual (undiscounted) GSA schedule rates." Protester's Comments at 5.

The agency concedes that the protester's assertion here is correct, but maintains that this single flaw in its analysis does not render unreasonable its conclusion that ACS's price is realistic. The agency explains that "[f]or the purposes of this protest" the agency "conduct[ed] another realism analysis for ACS by applying the discount rates set forth in ACS's pricing proposal to the proposed labor categories for each CLIN and for each year," and then comparing these rates to the applicable benchmark rates. This analysis showed that ACS's proposed discounted rates exceeded the applicable benchmark rates by a significant amount, which, consistent with the conclusions drawn prior to award by the agency, indicated that ACS's prices were realistic. Supplemental Agency Report (SAR) at 3, 5.

To understand this issue, we provide here a more complete description of ACS's price submission supporting its CLIN and sub-CLIN prices, and how it was evaluated and reevaluated. ACS's price submission included, for each CLIN and sub-CLIN, a table setting forth the proposed labor categories, the loaded GSA schedule rates for these categories, and the estimated number of hours for each category needed to perform the CLIN or sub-CLIN. Each table included an extended amount for each labor category (e.g., the hourly rate multiplied by the number of hours proposed); a total price for the work required (e.g., the sum of the extended amounts); an "undiscounted unit price" (e.g., the total price divided by estimated quantity for the CLIN or sub-CLIN); the "percentage discount" ACS chose to apply to that CLIN or sub-CLIN; and a discounted unit price, which was the fixed unit price offered on the

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supplemental comments on the agency reports. Accordingly, we consider Uniband to have abandoned this aspect of its protest. Baldt, Inc., B-278422, Jan. 28, 1998, 98-1 CPD ¶ 36 at 3 n.3. For the same reasons, we consider Uniband to have abandoned its protest bases that its proposal should have been considered technically superior to ACS's and that ACS's price submission was unbalanced.

pricing table for that CLIN or sub-CLIN. AR vol. 5, ACS Initial Price Submission, at D-5 through D-74.⁴ For example, ACS's submission included the following table as partial explanation of its pricing of CLIN 0001AA:⁵

[DELETED]

As noted above, the agency evaluated ACS's price submission by comparing the undiscounted GSA schedule rates with the benchmark rates for each labor category, and determined that ACS's price was realistic in part because these rates exceeded the benchmark rates. With regard to the agency's post-protest reevaluation of ACS's price submission, the agency applied the discount specified for each CLIN to each of the GSA schedule rates set forth in the tables (e.g., by applying the [DELETED] percent discount for CLIN 0001AA to the hourly rates for each of the labor categories specified for performance of that CLIN), and determining whether the resultant labor rates were realistic. SAR at 6; attach.1, Agency's Reevaluation of ACS's Price Submission. As indicated, the agency determined, as a result of its reevaluation, that ACS's "discounted" labor rates were reasonable and realistic because they exceeded the agency's benchmark rates by a significant amount.

Uniband argues that the agency's reevaluation of ACS's price submission "is merely a post hoc justification of its award decision that should be given no weight by GAO." Protester's Supplemental Comments at 1. We disagree.

In Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91, and its progeny, we questioned post hoc reevaluations by agencies during the protest process in response to protest contentions, because they were "prepared in the heat of an adversarial process" and thus "may not [have] represent[ed] the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process." Boeing Sikorsky Aircraft Support, *supra*, at 15. The Boeing case involved a post hoc reevaluation and cost/technical tradeoff late in the protest process where no tradeoff had been made during the initial source selection. The agency in Boeing continued to assert that it had not erred, but nevertheless submitted its reevaluation (which it argued was unnecessary) in an attempt to immunize itself against losing the protest. In Boeing (and unlike the situation here), the substantial errors and resulting closeness of the proposals meant that even after purported correction of the errors by the agency, the outcome of the competition was not clear. We thus concluded in Boeing that it was not appropriate

⁴ In contrast, Uniband's price submission applied a discount directly to each GSA labor rate in showing how it arrived at the unit price for each CLIN and sub-CLIN, and the agency compared Uniband's discounted rates with the benchmark rates for each labor category.

⁵ Certain information set forth in ACS's table that is irrelevant to this decision has been deleted.

to give substantial weight to the agency's after-the-fact decisional materials prepared in an attempt to argue, in what appeared to be a close competition, that there was no prejudice to the protester. Id.; see Scientific and Commercial Sys. Corp.; Omni Corp., B-283160 et al., Oct. 14, 1999, 99-2 CPD ¶ 78 at 18.

That being said, the Boeing decision and its progeny do not require that we disregard the agency's post-protest determination here for a number of reasons. First, and perhaps most importantly, neither our decision in Boeing nor its progeny provide for the automatic rejection of an agency's judgments made in response to protest contentions, such as INS's reevaluation of this aspect of ACS's proposal here. Rather, as explained in Boeing and the cases that follow, our Office will accord such post-protest judgments "lesser weight" than the contemporaneous source selection materials. Boeing Sikorsky Aircraft Support, supra, at 15. Indeed, in certain limited circumstances, our Office has considered post-protest agency judgments regarding the correction of evaluation errors in concluding that agencies' source selections were unobjectionable. See e.g., Scientific and Commercial Sys. Corp.; Omni Corp., supra, at 18-19; Marathon Watch Co. Ltd., B-281876, B-281876.2, Apr. 22, 1999, 99-1 CPD ¶ 89 at 6-7; Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 4-5.

Next, as indicated previously, this is not a situation like that in Boeing where the agency offered a "hypothetical" analysis in an effort to defend the protest while continuing to argue that its initial evaluation was reasonable. Rather, the agency here readily conceded that it erred in performing its price realism analysis because it had compared ACS's undiscounted schedule labor rates (rather than its rates as discounted) to the agency's benchmark rates. Such a concession is significant, in that the agency's reevaluation appears not as an attempt to establish through "hypothesis" that the protester could not have been prejudiced by the agency's actions (as in Boeing), regardless of the views of the protester and our Office, but rather as the evaluation that the agency would have performed had it noticed its error prior to award.

Also, as discussed previously, the agency's initial price realism analysis consisted of far more than merely determining whether in the agency's view the labor rates proposed by the vendors were realistic. The record reflects that the agency examined the vendors' respective approaches to performing the work, including any technological innovations described in their submissions as well as their respective familiarity with the work required. For example, the agency found that ACS's submission proposed the use of certain "state-of-the-art" technology that would "improve efficiency of processing" by, among other things, reducing "paper handling" and "manual input keystrokes," and that these efficiencies would result in cost savings that were being passed on to the agency. AR vol. 10, Initial BEC Report, at 7. The agency also noted here that ACS, as the subcontractor to the incumbent contractor Uniband, had "years of familiarity with the process." Id. at 8. In short, in determining the appropriate weight to accord the agency's price realism reevaluation

of ACS's submission, it weighs in the agency's favor that it did not need to perform a complete reevaluation during the protest to rectify its error, but rather, needed to correct only one aspect of its initial price realism evaluation because only that aspect was in error.

We note also that the agency's error was the result of a simple mistake, rather than an error in understanding or judgment. That is, the agency, in performing its initial price realism analysis, specifically noted that in its price submission ACS provided its "undiscounted labor rates . . . and then the discount was applied to arrive at the fixed price proposed for each CLIN." *Id.* Accordingly, the record reflects that the agency clearly understood ACS's price submission, and was aware that the labor rates set forth in ACS's price submission were "undiscounted." The agency then apparently mistakenly used ACS's "undiscounted labor rates" in its comparison with the agency's "benchmark rates," and according to the record, found ACS's rates realistic because they exceeded the agency's benchmark rates. As such, the agency's reevaluation consisted of the rather simple arithmetic exercises of first applying the discount set forth in each CLIN to the CLIN's labor rates to arrive at "discounted labor rates," and then comparing these "discounted labor rates" with the agency's benchmark rates to see if they were greater or less than the benchmark rates.

In sum, the record reflects that the agency's reevaluation of ACS's price submission was not hypothetical, was limited in scope (given that much of the initial evaluation is unobjectionable), and required only the application of rather simple arithmetic calculations. Because of this, the agency's post-protest reevaluation of ACS's proposed labor rates will not be "rejected" by our Office as requested by the protester, but rather, will be considered and weighed appropriately in determining whether the agency reasonably concluded that ACS's proposed prices were realistic.

The protester argues that, in any event, the agency's price realism reevaluation of ACS's proposal was flawed. In this regard, the protester points out that in performing the reevaluation, the agency operated on the assumption that the discounts in ACS's price submission for each CLIN applied equally to each labor category proposed. For example, as indicated above, in reviewing the labor rates for CLIN 0001AA for realism, the agency applied the overall [DELETED] percent discount set forth in CLIN 0001AA to the rate for each category of labor proposed, even though ACS's proposal does not state or otherwise provide a specific discount to be applied to these labor categories. As pointed out by the protester, the actual "discount" to be applied to a particular labor category proposed could be greater than the overall discount rate provided for that CLIN, if lesser discounts were applied to the other labor categories within that CLIN. Uniband concludes that because its price submission set forth the GSA schedule rate and discounted rate for each labor category proposed, and Uniband's discounted rates were reviewed by the agency in performing its price realism analysis, whereas ACS's specific discounted rates may not have been, the agency's price realism reevaluation evidenced unequal treatment and was thus unreasonable. Protester's Supplemental Comments at 2-3.

During the reevaluation, the agency considered the discounts proposed by ACS by applying the overall discount specified for each CLIN and sub-CLIN to the rate for each category of labor proposed. ACS used the same four labor categories in explaining its pricing under each of the CLINs and sub-CLINs, but applied discounts per CLIN that ranged from a low of [DELETED] to a high of [DELETED] percent [DELETED]. AR vol. 5, ACS's Pricing Submission, at D-1, D-2. In performing its reevaluation, the agency found that ACS's labor rates exceeded the agency's benchmark rates by a significant margin, even when it applied the largest [DELETED] percent discount to the rates for each labor category. SAR at 6; attach. 1 at 7. For example, the agency calculated loaded benchmark rates for the data entry clerk labor category that ranged from \$10.53 to \$11.49 per hour (depending on geographic location), whereas ACS proposed a loaded labor rate for that category, after the application of the [DELETED] percent discount, of [DELETED] per hour.⁶ SAR attach. 1 at 7.

In addition, as explained previously, the agency's initial price analysis of ACS's proposal was relatively detailed, using a variety of price analysis techniques and analyzing the vendors' respective approaches to performing the work, including any technological innovations described in their submissions, as well as their respective familiarity with the work required. These analyses evidenced that ACS's and Uniband's proposed prices were realistic and reasonable.

Thus, although Uniband asserts that the agency should have been more precise in performing the reevaluation, we simply cannot find that Uniband was prejudiced by the agency's alleged unequal treatment with regard to the manner in which the agency performed its price realism evaluation and reevaluation of ACS's proposal, given the discretion afforded agencies in their performance of price realism analyses, the fact that ACS's discounted labor rates as calculated by the agency exceeded the agency's benchmark rates by such a wide margin, and our view that the agency's overall price realism evaluation, and resultant determination that ACS's prices were realistic, were reasonable.

Uniband also protests that the agency failed to engage in meaningful discussions. Specifically, the protester argues that the agency erred because it did not inform Uniband during discussions that its proposal was evaluated as having a "weakness," in that some of the technology proposed presented a "risk," or that "its price was too high." Protest at 8; Protester's Comments at 6.

⁶ With regard to the other labor categories in ACS's submission, the comparison of the benchmark rates with ACS's rates, after the application of ACS's maximum discount of [DELETED] percent, yields a similar result, with ACS's "discounted" rates exceeding the benchmark rates by a wide margin. See SAR attach. 1.

Contracting agencies have wide discretion in determining the nature and scope of discussions, and our Office will not question their judgments unless shown to be without a rational basis. Acepex Mgmt. Corp., supra, at 6. Nevertheless, discussions must be meaningful, equitable, and not misleading. While agencies generally are required to conduct meaningful discussions by leading vendors into the areas of their submissions requiring amplification, this does not mean that an agency must “spoon feed” a vendor as to each and every item that must be revised or addressed to improve the submission. Digital Sys. Group, Inc., supra, at 8. Nor is an agency required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes the determinative factor between two closely ranked quotes. Acepex Mgmt. Corp., supra, at 5-6. The record here shows that the agency reasonably apprised Uniband of the principal areas of concern regarding the firm’s quote.

Specifically, the agency informed Uniband that its price submission was not compliant with the terms of the solicitation, and provided Uniband with a number of different questions regarding its technical and price submissions. AR vol. 2, Agency’s Written Discussions with Uniband (Oct. 5, 2001), attachs. 2, 3. Among other things, the agency specifically requested that Uniband “clarify which team member is going to provide the software (and what it is) for INS to retrieve the images of scanned forms using INS Workstations.” Id., attach. 2, at 1. Another discussion question referenced a section in Uniband’s quote, where Uniband, in describing its “phase-in transition plan” tasks, referred to “the development or acquisition of a . . . processing system [for certain of the solicited work],” AR vol. 7, Uniband’s Initial Technical Proposal, at 65-66, and requested that Uniband clarify this section, asking, among other things, if it was “Uniband’s intent to develop or acquire software and customize it to produce the system required” to accomplish this work. AR vol. 2, Agency’s Written Discussions with Uniband (Oct. 5, 2001), attach. 2, at 2.

In response, Uniband provided, among other things, a description of its ability to meet the requirements in question. With regard to the question regarding the provision of software, Uniband explained its proposed approach to developing software that would meet the agency’s needs, and stated that the responsible team member [DELETED]. AR, vol. 9, Uniband’s Response to Clarifications, at 1-2. With regard to the agency’s question regarding Uniband’s processing system, the protester explained that [DELETED]. Id. at 4.

The agency evaluated Uniband’s responses and noted numerous strengths with regard to the section of Uniband’s quote discussing its proposed technology for accomplishing the work required. For example, the TEC’s final report concludes that Uniband’s “technical approach is very clear and detailed,” and “demonstrated a good understanding of INS’ requirements and the approach to provide services required.” AR vol. 10, Final TEC Report, at 40.

Earlier in the report, on a matrix setting forth the evaluated strengths and weaknesses in Uniband's quote, it was noted that Uniband [DELETED] which posed "some risk to INS." Id. at 35.

The protester complains only that the agency's discussion questions concerning Uniband's "proposed technology" were inadequate in that they "did not provide notice that Uniband's technology posed a risk." Protester's Supplemental Comments at 3. However, the record reflects, and the protester apparently concedes, that the agency's discussion questions identified the areas in Uniband's quote that the agency felt constituted weaknesses or deficiencies, and thus required further explanation, including its apparent concern that Uniband [DELETED]. Therefore, because the agency's discussion questions here were sufficient to lead Uniband into the area of its submission requiring more information, Uniband was not deprived of meaningful discussions. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 9. That is, the agency was not required, in addition to identifying this area in Uniband's proposal that required more information and posing certain questions about this area, to also specifically inform the protester that it considered this area of Uniband's submission to pose a "risk."⁷ See id.

With regard to Uniband's argument that the agency erred in not informing Uniband that "its price was too high," there is no requirement that an agency inform an offeror during discussions that its price may be "too high," where the offeror's price is not considered excessive or unreasonable. See SOS Interpreting, Ltd., B-287477.2, May 16, 2001, 2001 CPD ¶ 84 at 3; Biospherics, Inc., B-285065, July 13, 2000, 2000 CPD ¶ 118 at 5. As discussed previously, the agency conducted a price analysis of the proposed prices, and determined that Uniband's price was reasonable and realistic based upon its proposed approach and other considerations--a determination that Uniband does not contest. Specifically, Uniband's labor rates were derived from its GSA FSS contract, and while Uniband's labor rate discounts ranged [DELETED], its rates were nonetheless found realistic by the agency, based upon the agency's comparison of Uniband's labor rates with the agency's benchmark rates. AR vol. 9, Uniband's Revised Proposal, GSA Rate Discount, at 1; vol. 10, Final BEC Report, at 24. Moreover, the agency found that Uniband's proposed "labor mix [was] reasonable for the work required." AR vol. 10, Final BEC Report, at 21-22.

⁷ In any case, there is nothing in the record to suggest that the agency's conclusion that certain of Uniband's "proposed technology" posed "some risk" to the agency materially affected the rating of Uniband's proposal or kept Uniband from having a reasonable chance of award.

Since the agency determined that Uniband's prices were reasonable and realistic, the agency was not required to advise Uniband during its discussions that its price was high in comparison with ACS's. See SOS Interpreting, Ltd., supra.

The protest is denied.

Anthony H. Gamboa
General Counsel