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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Imagine One Technology & Management, Ltd.

File: B-289334

Date: January 10, 2002

Nancie Lumpkins for the protester.
David P. Metzger, Esq., Holland & Knight, for DelaBarre & Associates Inc., an intervenor.
Lawrence Rudolph, Esq., National Science Foundation, for the agency.
Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that discussion questions improperly established new requirements, and that the questions reveal other improprieties in the evaluation, is denied where record shows that discussion questions in fact reflected solicitation requirements, and that evaluation was reasonable.

DECISION

Imagine One Technology & Management, Ltd. protests the award of a contract to DelaBarre & Associates Inc. under request for proposals (RFP) No. DMI-000002, issued by the National Science Foundation (NSF) as a HUBZone small business set-aside for support services for federal Small Business Innovation Research (SBIR) conferences. Imagine protests various aspects of the technical and cost evaluations.

We deny the protest.

The RFP sought proposals to provide support services for planning, promoting, and conducting 10 large conferences on federal research and development (R&D) for small high-tech companies. These conferences are the government's principal effort to disseminate information on federal R&D opportunities for small disadvantaged businesses and small technology-based companies. The RFP contemplated the award of a cost-plus-award-fee contract for 3 years, with two 1-year options.

Proposals were to be evaluated under three technical factors totaling 100 points: management plan (35 points); capability and experience of staff (35 points); and

technical approach (30 points). Cost proposals were not scored, but were evaluated to assess their realism and the probable cost to the government. The technical and cost factors were approximately equal in weight, and award was to be made based on the greatest value to the government.

Four proposals, including Imagine's and DelaBarre's, were included in the competitive range after initial technical and cost evaluations. The agency conducted three rounds of discussions with these offerors and evaluated their responses. In reviewing the cost proposals, the evaluators calculated the most probable cost (MPC) of each proposal by adjusting costs to account for arithmetic errors, incorrect rates, and omitted costs. The final evaluations under all factors were as follows:

Factors (Avail. Points)	Imagine	DelaBarre	Offeror 3	Offeror 4
Technical (100)	55.8	92.5	82.6	57.2
Management Plan (35)	19.3	32.9	28.5	21.3
Capability/Staff Experience (35)	19.5	32.1	26.8	19.4
Technical Approach (30)	17.0	27.5	27.3	16.5
MPC	$2,945,161	$2,392,416	$2,347,146	$2,473,754

In making the award selection, the source selection official (SSO) reviewed the reports of the technical and business evaluation panels, along with their recommendations. Imagine's and Offeror 4's proposals were eliminated because of their lack of technical expertise and their high MPCs. As between DelaBarre's and Offeror 3's proposals, the SSO considered DelaBarre's higher technical score and Offeror 3's lower MPC and found that the cost savings would be more than offset by the time and effort that would be necessary to ensure successful performance by Offeror 3. Accordingly, the SSO concluded that DelaBarre's proposal represented the greatest value. After receiving notice of the award to DelaBarre and a debriefing, Imagine filed this protest.

UNDISCLOSED CRITERIA

Imagine asserts that the agency improperly asked offerors during discussions to identify backups for key personnel and to identify which, if any, key personnel were certified meeting professionals or had meeting management credentials. In Imagine's view, because the RFP did not mention the need for backups or the requested credentials, these questions had the effect of establishing undisclosed evaluation criteria.

This argument is without merit. The RFP specifically called for proposals to include resumes for all key personnel, including qualifications and specific information on each individual's education, past experience, and most recent experience. RFP § L.5.B(d). It should have been evident to Imagine from this call for information that the agency intended to consider in the evaluation key personnel experience, including certifications, which relate to the level of an employee's experience. Similarly, section M of the RFP specifically advised offerors that, under the

"capability and experience of staff" subfactor, the agency would evaluate whether the "offeror commits adequate staff to fulfill the requirements of this acquisition, experienced in disciplines critical to the successful completion of the project management." RFP § M.2. This reference to experience put offerors on further notice that the agency would consider matters reflecting personnel experience. Further, we think an offeror's ability to supply backups if its proposed key personnel are unable to perform logically relates to the adequacy of the overall proposed staff; thus, the reference to adequacy of the proposed staff was sufficient to put Imagine on notice that backup staff and other measures aimed at ensuring that there would be enough staff to perform successfully would be considered in the evaluation. See TESCO, B-271756, June 24, 1996, 96-1 CPD ¶ 284 (agency properly may consider in evaluation matters reasonably related to stated evaluation criteria); see also Ryan Assocs., Inc., B-274194 et al., Nov. 26, 1996, 97-1 CPD ¶ 2 at 4 n.3. We conclude that the discussion questions reflected the evaluation considerations set forth in the RFP.

FLAWED EVALUATION

Imagine asserts that two discussion questions indicate that the agency did not adequately evaluate its proposal. Specifically, one question concerned Imagine's proposed startup lead time, and a second concerned the respective responsibilities of Imagine and its subcontractors. Imagine asserts that this information was clear from its original proposal, and that these questions therefore indicate that the agency did not read its proposal in full, and could not have properly evaluated it.

This argument is without merit. Discussions are tailored exchanges between the government and offerors with the purpose of allowing offerors to revise their proposals in order to maximize the agency's ability to obtain the best value. Federal Acquisition Regulation (FAR) § 15.306(d). There is nothing that precludes an agency from initiating discussions on a point that may be extensively addressed in an offeror's proposal; rather, "[t]he scope and extent of discussions are a matter of contracting officer judgment." FAR § 15.306(d)(3). Therefore, the agency's asking such a question, by itself, does not provide a basis for concluding that the agency did not read the proposal or that the evaluation was otherwise deficient.

Imagine responded to the questions, and NSF evaluated those responses. Imagine's response to the first question led the agency to find various strengths and no weaknesses regarding the startup lead time. AR, Tab 9, at 16. Based on Imagine's response to the question regarding the team members' responsibilities, the evaluators found that the "division of labor and responsibility has been clearly defined," and that "[t]he additional information provided has clarified the roles of the prime and subcontractors/consultants." AR, Tab 9, at 13. The evaluators also found, however, that Imagine relied too heavily on one of its subcontractors and that the response came across as "we know this is important and we know how to do it," which the evaluators found not to be a "sufficient response." Id. We find nothing unreasonable on the face of these conclusions, and Imagine has not explained how it believes they were unreasonable or otherwise improper.

TECHNICAL LEVELING

Imagine asserts that the agency engaged in technical leveling--helping an offeror bring its proposal up to the level of others through successive rounds of discussions--by asking DelaBarre questions which repeated the RFP requirements and seemed to "hint/suggest to DelaBarre as to how to change their proposal." Protester's Comments at 1. The short answer is that technical leveling is no longer specifically prohibited by the FAR. Dynacs Eng'g Co., Inc., B-284234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 4. More importantly, the questions to which Imagine objects--for example, some indicated to DelaBarre that its costs were too high and others provided it the opportunity to address matters Imagine believes DelaBarre, as the incumbent, should have addressed in its initial proposal--were totally appropriate. The questions were designed to provide DelaBarre an opportunity to improve its proposal, including the correction of aspects which initially may not have met the RFP's requirements, which is a legitimate goal of discussions.

BIAS

Imagine argues that NSF was biased against it, ostensibly because of its successful effort to have the procurement changed from a small business set-aside to a HUBZone set-aside. As evidence of this bias, Imagine points to the agency's decision to include its proposal in the competitive range despite its low technical score.

We will not attribute bias to an agency on the basis of inference and supposition, Five-R Co., B-288190, Sept. 10, 2001, 2001 CPD ¶ 163 at 4; without strong evidence to support such a conclusion, we will not assume that agency employees acted in bad faith. Communication Techs., Inc., B-283491, B-283491.2, Nov. 30, 1999, 99-2 CPD ¶ 104 at 7. Here, the record contains no evidence--beyond the protester's speculation--of bias or bad faith. Specifically, there is no basis to conclude that the agency's decision to place Imagine's lower-rated proposal in the competitive range resulted from anything but the agency's good faith judgment that the proposal could be made viable through discussions. We note in this regard that, at the time the competitive range was established, Imagine's and Offeror 4's proposals had similar scores, which were much closer to the initial scores of the higher-rated offerors.[1]

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[1] Imagine questions how its proposal score dropped from 74.7 points in the initial evaluation to 55.8 in the final evaluation. Protester's Comments at 15. The agency's evaluation summary explained the point drop as due to a number of reasons, including the agency's recognition during negotiations that it "would be difficult for [Imagine] to succeed without extensive involvement by NSF," and the lack of detailed responses on how Imagine would manage tasks. AR, Tab 7, at 13. Since Imagine has ignored this explanation in raising its assertion, we view this argument as mere disagreement with the agency's judgment, which is not a sufficient basis for

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COST ADJUSTMENT

Imagine challenges the net addition of approximately $670,000 to its cost proposal in the course of the cost evaluation. According to Imagine, these costs were inconsistent with its proposed rates and were already included in its proposal. This argument is academic. While Imagine has responded to the agency's explanation for most of the adjustments, it has effectively conceded that one of them was reasonable--specifically, it has not challenged the addition of a 7-percent fee to its overall cost.[2] When Imagine's proposed cost is adjusted upward solely by this figure (i.e., disregarding the other upward adjustments), its MPC exceeds DelaBarre's by more than $87,000. Since Imagine's technical score also was lower than DelaBarre's, this argument, even if successful, would have no effect on the award. We will not consider such academic questions. Dyna-Air Eng'g Corp., B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132.

The protest is denied.

Anthony H. Gamboa
General Counsel

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sustaining a protest. BFI Waste Sys. of Nebraska, Inc., B-278223, Jan. 8, 1998, 98-1 CPD ¶ 8 at 2.

[2] The adjustment was based on the fact that Imagine's final revised proposal specifically agreed to the application of an up to 7-percent award fee, but its final cost proposal omitted that fee.