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Decision

Matter of: Johnson Controls Security Systems, LLC

File: B-296490.3; B-296490.4; B-296490.5

Date: March 23, 2007

David R. Johnson, Esq., Vinson & Elkins LLP, for the protester.
Kevin P. Connelly, Esq., and Amanda B. Weiner, Esq., Seyfarth Shaw, LLP, for Quanta Systems Corporation, the intervenor.
Marvin Kent Gibbs, Esq., Bureau of Engraving and Printing, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly failed to consider awardee's past performance as incumbent contractor on solicited requirement is sustained where solicitation called for evaluation of past performance, and agency had actual knowledge of awardee's performance.
 2. Agency's finding that awardee's staffing offered advantages as compared to protester's staffing was unreasonable where there is no indication in record that agency considered fact that protester proposed to staff contract [deleted], which would appear to diminish the significance of awardee's identified advantages.
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DECISION

Johnson Controls Security Systems, LLC, (JC) protests the award of a contract to Quanta Systems Corporation under request for proposals (RFP) No. BEP-04-0022, issued by the Department of the Treasury, Bureau of Engraving and Printing (BEP), for the operation, monitoring, and repair of the security systems at BEP's currency production facility in Washington, D.C. JC alleges that the agency misevaluated proposals and made an unreasonable source selection decision.

We sustain the protest.

The RFP, originally issued in September 2004, contemplated the award of a fixed-price contract for a base year, with four 1-year options. The solicitation calls for the contractor to provide sufficient staff to perform the required services 24 hours a day, 365 days a year. All contractor personnel having access to BEP's

security systems or documentation are required to complete a background investigation and qualify for, and maintain, a high-risk security clearance, and also are required to obtain certifications to perform security system maintenance, installation and engineering tasks.

For evaluation and award purposes, the solicitation contemplated a two-step process. Under phase I, written proposals were to be evaluated on a pass/fail basis using three equally weighted criteria—demonstrated corporate experience, experience of proposed staff, and past performance. Offerors with passing proposals included were in the competitive range and required to make oral presentations for purposes of the phase II evaluation, under which the proposals were evaluated using three additional criteria—management and technical approach, management plan, and transition plan. Overall technical merit was more important than price.

The agency made award to Quanta in March 2005. That award decision was protested by JC, first with the agency, and subsequently with our Office. On August 29, 2005, we issued a decision sustaining JC’s protest, finding that the agency had relied on a material misrepresentation in Quanta’s proposal in making its award decision, and also finding that the award decision had failed to take into account certain “very compelling” advantages associated with JC’s proposal arising from the fact that JC had been the incumbent contractor for the requirement. Johnson Controls Sec. Sys., B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ __.¹ We recommended that the agency reopen the acquisition and either conduct new oral presentations and obtain revised proposals, or simply obtain revised proposals, evaluate those proposals and make a new source selection decision. Id. at 11-12. (Quanta continued to perform the contract pending implementation of the agency’s corrective action.)

In response to our recommendation, the agency reissued the solicitation and called for new proposals. Three firms submitted proposals, including JC and Quanta. The agency conducted a new phase I evaluation and determined that all three proposals merited a “pass” rating. The agency included all three proposals in the competitive range, conducted oral presentations, and solicited and received final proposal revisions (FPR). The agency then evaluated the FPRs using the phase II evaluation criteria and arrived at the following evaluation results:

Offeror	Technical Score	Price
Quanta	100 (out of 100)	\$25,420,321

¹ Although our decision was issued in protected form in 2005, a final redacted version has not been prepared, pending completion of the recompetition. A final redacted version will be forwarded for publication once this competition has been completed.

JC	99	\$23,892,245
Offeror A	96	\$25,223,021

Post Negotiation Memorandum at 8.² Notwithstanding the closeness of JC's and Quanta's point scores and JC's lower price, the agency again determined, through a price/technical tradeoff, that Quanta's proposal represented the best value, and therefore left its contract in place. Following a debriefing, JC filed this protest.

JC asserts that the agency misevaluated proposals in a number of areas. In reviewing protests concerning an agency's evaluation of proposals, our Office does not reevaluate proposals; rather, we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. Pickering Firm Inc., B-277396, Oct. 9, 1997, 97-2 CPD ¶ 99 at 4. We have considered all of the parties' arguments and, for the reasons discussed below, find that the evaluation here was unreasonable.

PAST PERFORMANCE

JC asserts that the agency unreasonably evaluated Quanta's past performance. According to the protester, Quanta has had ongoing problems in performing its current contract with BEP—including a dispute over the classification of employees for Department of Labor wage/hour purposes, staffing inadequacies, and high employee turnover rates—and the agency ignored these problems in the evaluation. JC maintains that this was unreasonable, since Quanta's performance of the existing requirement is arguably the most relevant indicator of the firm's future performance.

The agency maintains that it reasonably excluded the information from the evaluation because, to the extent that Quanta experienced performance problems, they occurred at the beginning stages of the contract, and because the problems stemmed in part from internal issues at BEP that were not caused by Quanta. Agency Report (AR), exh. C, at 2-3, exh. D, at 1-2. The agency notes that, in order to equalize the competition, it also did not consider JC's prior performance at BEP. Id. The agency further asserts that, in any event, past performance was only evaluated on a pass/fail basis in order for it to make a competitive range determination; according to the agency, none of Quanta's alleged performance difficulties would have resulted in its receiving a failing rating for past performance.

We find that the agency unreasonably omitted Quanta's past performance information from the evaluation. The RFP specifically provided that the past performance evaluation would be based on consideration of "all relevant facts and

² The post-negotiation memorandum submitted by the agency in its report is undated, but the contracting officer, in her statement of facts, represents that it was prepared on November 28, 2006.

circumstances.” RFP at 124. Quanta’s performance of the BEP contract for the same requirement being solicited clearly constituted “relevant facts and circumstances”; indeed, we agree with the protester that Quanta’s performance as the incumbent for this requirement may be the most relevant information available.

The agency’s suggestion that it reasonably omitted the past performance information from its evaluation because of the nature of the information is not persuasive. First, regarding BEP’s assertion that the performance problems arose only during start up of Quanta’s contract, the record shows that, in fact, Quanta experienced performance problems from the start of the contract in July 2005 through the reopening of the acquisition and source selection; the latest performance concern is reflected in an e-mail dated September 14, 2006, just days before the offerors’ submission of FPRs. Agency Core Documents (ACD), vol. 3, exh. 7. Similarly, while BEP attributes Quanta’s performance problems, to some extent, to internal BEP problems, one of the concerns under Quanta’s contract was a persistent problem with adequate staffing of the contract. Since staffing generally would be the responsibility of the contractor, there is no reason to believe—and the agency has not established in the record—that any internal BEP problems were the cause of Quanta’s staffing problems.

There also is reason to believe that consideration of Quanta’s performance as the incumbent could have had a broader effect on the agency’s technical evaluation. In this regard, one of the reasons cited in support of the award to Quanta was the fact that all of its proposed personnel already had security clearances. However, the record includes a memorandum dated June 23, 2006—almost 1 year after Quanta began performance, and some 7 months after the firm tendered its current proposal—describing persistent shortfalls in Quanta’s available staff for contract performance. Specifically, the memorandum notes that, of the [deleted] staff positions called for under Quanta’s contract, [deleted] remained unfilled, and only [deleted] security clearance packages had been submitted to fill these slots. While we cannot determine from the record before us the precise posture of Quanta’s available staff at this time, the agency’s evaluation conclusion appears, at a minimum, to be inconsistent with the June 23 memorandum.

Further, many of the concerns with Quanta’s performance noted in the record relate to the adequacy of the training of Quanta’s personnel performing work in the agency’s central police operations center (CPOC).³ ACD, vol. 3, exh. 7. However, the agency cited the fact that the awardee’s (in contrast to the other offerors’) proposed personnel were already trained to perform in CPOC as support for its

³ The record reflects that the most persistent and recent concern voiced by the agency regarding Quanta’s personnel is the lack of National Crime Information Center (NCIC) and Washington Area Law Enforcement System (WALES) training to work in the CPOC area.

award decision; the noted concerns, if considered, could have affected the agency's determination that Quanta had an advantage in this area.

We conclude that the agency's failure to consider Quanta's past performance under its current BEP contract was inconsistent with the RFP, and unreasonable given the relevance of the information to performance of this requirement. While we recognize that past performance was to be rated on a pass/fail basis, the record contains evidence of problems with Quanta's performance of the current contract that the agency failed to consider in its evaluation. The agency's actions appear prejudicial to JC, since the problems cited appear to undermine the basis for the agency's award decision. We therefore sustain the protest on this ground.

REASONABLENESS OF EVALUATION CONCLUSIONS

We also find that, in addition to the concerns relating to the adequacy of Quanta's staffing and its staff's training (concerns which, as discussed, appear to undermine the basis for the agency's source selection decision), the agency's conclusions regarding Quanta's incumbency advantages—which the agency termed “very compelling”—were unreasonable in light of JC's proposal.

The record shows that the agency placed a heavy emphasis on the fact that Quanta's personnel all had the required high-risk security clearances; this reduced performance risk as compared to other offerors because any other offeror would need to obtain high-risk security clearances for its personnel, which would take a significant amount of time. The record shows, however, that [deleted] of JC's [deleted] proposed personnel were [deleted], and that they had provided JC with letters of intent to accept employment with the firm should it win the contract. Johnson Control Final Proposal Revision at 10-48. There is no indication that the agency considered this fact in justifying award to Quanta at a higher price. Further, according to the agency, the time involved in obtaining high-risk security clearances for JC's remaining proposed personnel would be about 5 to 8 weeks. AR, exh. E. As JC notes, Quanta's proposal contemplates a transition period of 4 to 8 weeks to the new contractor. Quanta Oral Presentation at 19. Thus, Quanta would have its personnel on site during the period of time necessary for JC's remaining personnel to obtain high-risk security clearances. Again, there is no indication that the agency considered the extent to which this information mitigated Quanta's technical advantage in this area.⁴

⁴ The record shows that several of JC's letters of commitment bore dates corresponding to the time when it tendered its proposal in November 2005 rather than at the time it submitted its FPR in September 2006, and that an additional small number of the letters were undated. These considerations led the agency evaluators to deduct 1 point from JC's technical score, which reduced JC's score from 100 to 99. ACD, vol. 3, JC Final Evaluation, at 1-2. However, the source selection decision

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The agency also cited as a discriminator the fact that all of Quanta's personnel had the required training to work in the agency's CPOC area.⁵ However, the record shows that all [deleted] of JC's proposed employees that might work in the CPOC area were [deleted], and that, of these individuals, [deleted] had submitted letters of intent to work for JC. JC Final Proposal Revision at 3-48. Thus, the [deleted] of JC's proposed personnel had the same training as Quanta's, and these individuals had specifically committed to work for JC. It is not apparent from the record that the agency considered this fact in identifying Quanta's technical advantages.⁶

Finally, the agency's source selection decision cited as a benefit the fact that Quanta's proposed personnel had knowledge of the "intimate details and vulnerabilities of the BEP security systems." Post Negotiation Memorandum at 11. Again, however, there is no indication that the agency considered the extent to which this advantage was reduced by JC's proposal of [deleted] of its staffing. We therefore sustain the protest on this ground.

We note that the evaluation also may have been skewed by the evaluation standard applied by the agency. In this regard, JC asserts that the agency, in its source selection, improperly assigned relative weights to technical merit and price that were different from the weighting set forth in the RFP, and that this may have exaggerated any technical advantage held by Quanta.⁷

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contains no mention of these considerations, or any analysis of the fact that JC had offered a substantial number of personnel with the required security clearances.

⁵ As noted, the agency requires all personnel working in the CPOC area to have NCIC and WALES training.

⁶ Moreover, as discussed above with regard to the agency's failure to consider Quanta's performance as the incumbent, it is not clear that all of Quanta's proposed personnel had the required training.

⁷ The agency asserts that this aspect of JC's protest is untimely because the firm knew at the time of its debriefing both the score assigned to its proposal and the fact that its price was lower than Quanta's, and could have asked the agency to reveal Quanta's proposal score at that time. According to the agency, this information would have permitted JC to raise this allegation at that time. We disagree. Merely knowing Quanta's score would not have enabled JC to raise this argument because the argument is based on information contained in the source selection document, namely, the standard applied by the source selection official in making the price/technical tradeoff. JC raised its argument within 10 days after being provided a copy of the agency's source selection document, which revealed the actual basis for
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The record appears to support this assertion. While the RFP provided that technical considerations were “more important” than price, the source selection decision document, which justified award based on Quanta’s technical superiority notwithstanding its higher price, applied a different standard—that “overall technical merit will be considered significantly more important than price.” Post Negotiation Memorandum at 8. The agency’s overstating the importance of technical merit indicates that the agency gave greater weight to technical merit versus price than provided for in the RFP. An agency may not announce one basis for its source selection in the solicitation and then make award on a different basis. Beneco Enters., Inc., B-283154, Oct. 13, 1999, 2000 CPD ¶ 69 at 7. While there is no evidence indicating the impact of the agency’s weighting technical merit “significantly more important” rather than merely “more important,” since the evaluation scores were essentially equal, application of the incorrect standard may have exaggerated the relative importance of Quanta’s identified technical superiority sufficiently to affect the agency’s tradeoff analysis.

RECOMMENDATION

We recommend that the agency reevaluate proposals and make a new source selection decision in a manner consistent with the terms of the RFP and the above discussion. Should the agency determine that a proposal other than Quanta’s represents the best value to the government, we further recommend that the agency terminate Quanta’s contract and make award to the other concern, if otherwise proper. We also recommend that the agency reimburse JC’s costs of filing and pursuing its protest, including reasonable attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). JC’s certified cost claim, detailing the time spent and costs incurred, must be submitted to the agency within 60 days of receiving our decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel

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the agency’s source selection decision. The assertion therefore is timely. 4 C.F.R. § 21.2(a)(2) (2006).