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Comptroller General
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Decision

Matter of: Panacea Consulting, Inc.

File: B-299307.4; B-299308.4

Date: July 27, 2007

Lars E. Anderson, Esq., J. Scott Hommer, III, Esq., Peter A. Riesen, Esq., and Keir X. Bancroft, Esq., Venable LLP, for the protester.

Lawrence E. Carr, Esq., Dana G. Theriot, Esq., and Justin T. Banford, Esq., Carr, Morris & Graeff, PC, and Eric J. Marcotte, Esq., Winston & Strawn, LLP, for Systems Integration & Development, Inc., an intervenor.

Herman J. Narcho, Esq., Department of Labor, 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

Protest that agency's evaluation and source selection decisions are unreasonable is sustained where record lacks any meaningful explanation for evaluation scores and source selection decisions.

DECISION

Panacea Consulting, Inc. protests the issuance of two task orders to Systems Integration and Development, Inc. (SID) under solicitation Nos. FY07FA1-64079E446-0001 (solicitation 446) and FY07FA3-64079E448-001 (solicitation 448), issued by the Department of Labor (DOL) for, respectively, project management support services and core research and development support services. Panacea asserts that the agency made errors in its evaluation of submissions and in its selection decisions.

We sustain the protest.

The solicitations contemplated the issuance of task orders under the successful vendor's Federal Supply Schedule (FSS) contract for a base year, with four 1-year options, to perform various professional services on an as-needed basis.¹ For

¹ The agency, citing 41 U.S.C. § 253j(d) (2000) (which generally prohibits protests against the issuance of a task or delivery order under indefinite-delivery, indefinite-quantity contracts), asserts that our Office lacks jurisdiction to consider these

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purposes of preparing their price submissions, vendors were given a list of specific labor positions and a fixed number of hours for each performance period. Vendors were to calculate prices based on the number of hours specified in the solicitations, multiplied by the hourly rates they proposed for each position.

The evaluation was to be on a “best value” basis, considering price and two non-price factors. Under solicitation 446, submissions were to be evaluated based on the qualifications of the proposed staff evaluation factor (70 percent of the non-price evaluation weight), and understanding of the statement of work (SOW), relevant experience, capabilities, and approach evaluation factor (30 percent of non-price weight). Overall, the non-price and price factors were weighted at 55 and 45 percent of the total evaluation, respectively. Under solicitation 448, 75 percent of the non-price evaluation weight was allotted to the qualifications of proposed personnel evaluation factor, with 25 percent allotted to the understanding of the SOW, relevant experience, capabilities, and approach evaluation factor. The non-price and price factors were weighted at 70 and 30 percent of the total evaluation, respectively.

The agency received numerous responses to the solicitations and, after evaluation thereof, issued the two task orders to SID, finding that SID’s submissions represented the best value. After learning of the selection decisions, Panacea protested to our Office. We developed the record in those protests, and thereafter conducted an “outcome prediction” alternative dispute resolution (ADR) conference.² During the ADR, the cognizant GAO attorney advised the parties that the protests appeared to be meritorious, insofar as the record showed that the agency had improperly weighted the price and technical considerations in assigning the numeric evaluation scores on which the source selection decisions were based, and that the record contained no narrative support for the scores. Accordingly, the GAO attorney advised the agency that it could address these concerns by

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protests because it is placing task orders against blanket purchase agreements entered into between the agency and vendors pursuant to the vendors’ FSS contracts. The agency is incorrect. The task orders ultimately are to be placed against the successful vendor’s FSS contract. The limitation on our jurisdiction to consider task/delivery order protests does not extend to orders issued under the FSS. Thus, the protests here are subject to our jurisdiction. Severn Cos., Inc., B-275717.2, Apr. 28, 1997, 97-1 CPD ¶ 181 at 2-3 n.1; see also CMS Info. Servs., Inc., B-290541, Aug. 7, 2002, 2002 CPD ¶ 132 at 4 n.7 (no basis to distinguish between issuance of task orders and blanket purchase agreements under the FSS since, in both cases, the acquiring activity ultimately is placing orders against a vendor’s FSS contract).

² For a description of the outcome prediction ADR process, see Alaska Structures, Inc.—Costs, B-298575.4, Jan. 22, 2007, 2007 CPD ¶ 17 at 4 n.4.

reevaluating submissions in a manner consistent with the terms of the solicitations, and preparing narrative materials to explain the basis for the point scores assigned and the source selection decisions made.

In response to the ADR, the agency advised our Office that it intended to take corrective action by rescoring the submissions in a manner consistent with the terms of the solicitations, and by documenting its scoring. We dismissed Panacea's protests as academic (B-299307 et al., Mar. 28, 2007).

The agency implemented its proposed corrective action by rescoring the submissions. Additionally, the agency prepared narrative materials to describe the rescoring process. The agency concluded that SID's submissions represented the best value to the government, considering price and the non-price considerations. (Under solicitation 446, the agency found SID [deleted] to Panacea, and SID offered a [deleted] (SID offered a price of \$[deleted] versus Panacea's price of \$[deleted]); under solicitation 448, the agency similarly found SID [deleted], and it also offered a [deleted] than Panacea (SID offered a price of \$[deleted] versus Panacea's price of \$[deleted].) On the basis of these revised evaluation materials, the agency affirmed its prior source selection decisions, again concluding that SID's submissions—which received the highest overall score under each acquisition—represented the best value. Panacea challenges the new source selection decisions.

SUBMISSION REEVALUATION

Panacea again challenges the agency's evaluation scoring and source selection decisions, and also continues to maintain that there is inadequate documentation to establish that the evaluations were reasonable.

The agency takes the position that it never agreed to completely reevaluate the submissions. Rather, the agency maintains that, at the time of the ADR procedure, it understood that there were mathematical or methodological errors in its calculation of the point scores; that it agreed to correct these errors; and agreed that it would document the basis for assigning the new scores and for the source selection decisions. In support of its position, the agency directs our attention to the letter to our Office in which it advised us that it would take corrective action, stating that it would "normalize the technical scores so that both technical and cost scores will be normalized and give them the required weight in the evaluation; and provide a narrative explaining the basis for the final scores and the selection decision." Agency Corrective Action Letter, Mar. 27, 2007.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. However, for our Office

to perform a meaningful review, the record must contain adequate documentation showing the bases for the evaluation conclusions and source selection decision. OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 8.

Here, notwithstanding the agency's stated understanding as to what its corrective action would entail, the fact is that the record provided to our Office in response to the protest does not contain sufficient information to support the evaluations or source selection decisions. Under solicitation 446, for example, the record includes a description of the agency's method for scoring the submissions under the understanding of the SOW, relevant experience, capabilities, and approach evaluation factor. The description states that the agency prepared a matrix that included standards for the award of point scores ranging from 0 points (for an unsatisfactory submission) to 10 points (for an excellent submission), and states further that the evaluators populated this matrix with the raw point scores assigned to the submissions under five subfactors (such as the vendor's understanding of the SOW, and the vendor's approach to staff retention). Protest, exh. 1. This explanation goes on to state, mathematically, how the agency calculated the ultimate scores for the price and non-price factors. Id. However, the record does not include any explanation of the bases for assigning the raw point scores in the first place; that is, there is no indication of, for example, any evaluated strengths or weaknesses in the proposals that support the assigned scores.

The record does include one evaluator's worksheets prepared in connection with solicitation 446. Agency Report (AR) exh. 12. The worksheets include some limited comments, but the comments do not relate the evaluator's conclusions about the submissions to the scores assigned. Further, the worksheets reflect the views of only one of the three evaluators who participated in the evaluation and, thus, in no way can serve as a substitute for a narrative explanation of the consensus scores assigned to the submissions. Protest exh. 2. Moreover, the agency states that, since this evaluator's worksheets were prepared during the original evaluation, they are irrelevant to the current evaluation. Agency Supplemental Submission, June 15, 2007, at 2.

The evaluation materials for solicitation 448 are similarly inadequate. As is the case with the other solicitation, the record contains a document describing the scoring matrix, which identifies the standards for assigning point scores of 0 to 10 as well as various subfactors used in the scoring. Protest exh. 3. Also, as with the other solicitation, the record fails to explain what features of the submissions led the agency to score them as it did. As with solicitation 446, the agency submitted some individual scoresheets for solicitation 448. AR exhs. 9, 11. However, all of these scoresheets were prepared by a single evaluator and contain only brief, often cryptic, notations regarding the basis for the scores assigned. In all of the scoresheets for solicitation 448, the portion of the scoresheet relating to the understanding of the SOW, relevant experience, capabilities and approach evaluation factor is entirely blank, containing neither point scores nor narrative explanation. Id. Further, there

are several scoring anomalies that are nowhere explained. For example, the agency assigned one of SID's employees a score of 13 points under a subfactor with a maximum of 10 points available, and also assigned both a score of 5 and a score of 3 (which were added together) under another subfactor, again without any explanation. AR exh. 9, SID Scoresheet, at 4; exh. 11, SID Scoresheet, at 4. The record also contains no source selection decision document for either solicitation prepared in connection with the agency's corrective action.

Point scores cannot be used as a substitute for adequate documentation showing the bases for the evaluation conclusions reached and source selection decisions made. OSI Collection Servs., Inc., supra, at 8. We conclude that the record contains insufficient documentation to explain the basis for the evaluations and the source selection decisions; accordingly, we sustain this aspect of Panacea's protest.

RECOMMENDATION

In view of the forgoing discussion, we sustain Panacea's protests.³ In fashioning our recommendation, we note that the record shows that, as to both the protester and the awardee, circumstances may have changed with respect to the availability of their previously identified employees because of the time that has passed since receipt of submissions. Accordingly, the agency should consider obtaining revised submissions. Whether or not it obtains revised submissions, we recommend that the agency evaluate the submissions and document the bases for its evaluation conclusions and source selection decisions. If, at the conclusion of these activities, the agency determines that a vendor other than SID is properly in line for award, we further recommend that the agency cancel the task orders awarded to SID and issue task orders to the successful vendor, if otherwise proper. We also recommend that Panacea be reimbursed the costs of filing and pursuing its protest as to the sustained

³ Panacea raised numerous additional arguments in its protest. Some of those issues (specifically, those relating to the propriety of the agency's scoring of submissions and source selection decisions) are academic in light of our recommendation that the agency reevaluate submissions. As to Panacea's remaining assertions, we have fully considered them and find that they are without merit. For example, Panacea asserts that the branch chief for research and development is biased against it, as evidenced by his circulating a memorandum to contractor employees, prior to receipt of submissions, stating that there was no reason why an individual's resume could not be submitted by more than one vendor. Protest exh. 7. Since there is nothing inherently improper in more than one vendor submitting the same personnel, an agency official's remarking on this fact does not evidence bias.

issues, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2007). Panacea should submit its certified claim for those costs, detailing the time spent and the costs incurred, within 60 days of its receipt of our decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel