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Decision

Matter of: Karrar Systems Corporation

File: B-310661.3; B-310661.4

Date: March 3, 2008

Kevin P. Connelly, Esq., Seyfarth, Shaw, LLP, for the protester.

Ross Aboff, Esq., Archer & Greiner, for BANC3, Inc., an intervenor.

Daniel Pantzer, Esq., Denise M. Marrama, Esq., and James F. Ford, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably rated awardee's technical proposal acceptable despite eight weaknesses and only three strengths is denied where determination of acceptability was not based solely on number of strengths versus weaknesses and protester does not argue that awardee's proposal did not satisfy any of the criteria agency applied.
2. Assertion that protester's proposal should have been rated good rather than acceptable under one management subfactor is denied where record demonstrates that evaluators reasonably assigned acceptable rating and, in any case, conclusion that awardee's proposal was superior under management factor was based, not solely on adjectival ratings under subfactors, but on source selection official's consideration of underlying strengths and weaknesses of protester's and awardee's proposals.
3. Protest that "best value" determination was unreasonable is denied where, in determining that protester's technically superior proposal was not worth a 30 percent price premium, source selection official specifically considered proposals' ratings under each factor and subfactor, weight accorded each factor, and proposals' underlying strengths and weaknesses.
4. Protest that awardee's proposal to recruit spouses of transferred government personnel created improper conflict of interest due to potential for unduly favorable consideration from evaluators is denied where proposal was general in nature and

did not identify individuals that could be affected, and there is no other evidence or reason to believe that evaluators were unduly influenced.

DECISION

Karrar Systems Corporation protests the award of a contract to BANC3, Inc. under request for proposals (RFP) No. W15P7T-07-R-A226, issued by the Department of the Army for program and administrative services for its R2 program (which is designed to provide an efficient means of acquiring critical, near obsolete items necessary to sustain crucial weapon systems). Karrar asserts that the Army miscalculated its and BANC3's proposals and performed an improper "best value" analysis.

We deny the protest.

The solicitation contemplated a best value award of a 5-year indefinite-delivery/indefinite-quantity contract based on four evaluation factors (in descending order of importance): technical (with subfactors for three sample task orders--pre-award, post award, and budget), management (with subfactors for transition plan to Aberdeen (the R2 program is being moved from Fort Monmouth, New Jersey to Aberdeen Proving Ground, Maryland), transition plan, and management plan), performance risk, and price. RFP at 59.

Four offerors responded to the RFP. A source selection evaluation board (SSEB) assigned the proposals adjectival ratings under the technical and management factors and subfactors considering evaluated strengths and weaknesses, whether a proposal met the requirements of the RFP, the amount of detail provided, and the feasibility of the proposed approach.¹ Agency Report (AR) at 3. Following the initial evaluation, a competitive range determination, discussions, and the submission and evaluation of final proposal revisions, Karrar's proposal was rated good under the technical factor, with subfactor ratings of good for the pre- and post-award sample task orders, and acceptable for the budget sample task order, Final Source Selection at 21; acceptable under the management factor, with subfactor ratings of acceptable for transition to Aberdeen, good for transition plan, and acceptable for management plan, id. at 37; and low for performance risk. BANC3's proposal was rated acceptable under the technical factor, with acceptable ratings for each subfactor, id. at 13; good under the management factor, with ratings of good for each subfactor, id. at 29; and low for performance risk. Karrar's proposed price was \$25,119,864, and BANC3's was \$17,251,531.92. Id. at 44. Based on these evaluation results, the agency selected BANC3's proposal as offering the best value to the government. Karrar protests the award decision.

¹ Under the technical and management factors and subfactors, proposals were rated outstanding, good, acceptable or unacceptable. Under the management factor and subfactors, proposals also could be rated as susceptible to being made acceptable.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def., LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. Here, as discussed below, we find that the agency's evaluation of BANC3's and Karrar's proposals and the resulting best value analysis were reasonable.

TECHNICAL FACTOR

Karrar complains that BANC3's proposal should have been rated unacceptable under the technical factor, since it was assigned three times as many weaknesses (eight) as strengths (three). This argument is without merit. First, there was nothing in the RFP providing that a certain mix of strengths and weaknesses was necessary in order for a proposal to obtain a rating of acceptable. Further, as indicated, the overall factor ratings were based on a review of the adjectival ratings assigned under each of the subfactors--BANC3's proposal was acceptable under all three subfactors--as well as on whether the proposal met the solicitation requirements, contained at least minimum detail and was at least minimally feasible. A proposal was rated unacceptable only if it contained major errors, proposed an approach that could not be expected to meet requirements, or involved very high risk and could not be corrected without a major rewrite. AR at 2, 3. This methodology was in no way inconsistent with the RFP's evaluation scheme, and Karrar has not specifically argued that BANC3's proposal failed to satisfy any of the criteria the agency applied. We conclude, on the record here, that the agency reasonably rated BANC3's proposal acceptable under the technical factor.

MANAGEMENT FACTOR

Karrar argues that its proposal should have been rated good, rather than acceptable, under the transition to Aberdeen subfactor, given that its proposal was assigned one significant strength plus one strength under that subfactor. Karrar notes that, in comparison, BANC3's proposal was rated good under the subfactor with three strengths. Karrar asserts that a good rating under this subfactor would have raised its rating under the management factor to good, which likely would have moved Karrar into line for the award.

The Army explains in response that in evaluating the proposals the SSEB assigned a good rating only where a proposal offered "some significant strengths or numerous strengths which are not offset by weaknesses." Source Selection Evaluation Plan (SSEP) at 17. The SSEB did not consider one significant strength plus one strength to meet the "some significant strengths or numerous strengths" standard for a good rating. In contrast, the agency found that BANC3's three strengths did satisfy the "numerous strengths" standard. Our review of the record confirms that the SSEB was consistent in this regard; at least two significant strengths or three strengths

were required in order for a proposal to receive a good rating.² While Karrar maintains that one significant strength plus one strength also should have warranted a good rating, given that the approach was applied consistently, we find it unobjectionable.

In any case, Karrar's focus on the adjectival rating for the transition to Aberdeen subfactor is misplaced; ratings are not binding on the SSO but, rather, serve only as a guide to intelligent decision making. Chapman Law Firm, LPA, B-293105.6 et al., Nov. 15, 2004, 2004 CPD ¶ 233 at 5. Here, the SSO determined that BANC3's proposal was "better" than Karrar's under the management factor based not simply on a comparison of the adjectival ratings under the subfactors, but on the evaluated strengths and weaknesses that were assigned both proposals under all of the subfactors. SSD 4-5. In this regard, Karrar's proposal received a total of one significant strength, eight strengths, and no weaknesses, while BANC3's received three significant strengths, nine strengths and no weaknesses. Id. Based on this information, we think the SSO reasonably could determine that BANC3's proposal was "better" than Karrar's under the management factor. It follows that there is no reason to believe that a change in one of Karrar's proposal's subfactor ratings would have affected the award determination.

Karrar asserts that the agency unreasonably assigned both its and BANC3's proposals a strength under the transition plan subfactor for their incumbent staff transition plans.³ Karrar's proposal was assigned a strength based on its having the incumbent workforce in place, Final Evaluation at 2, but Karrar claims that this feature of its proposal warranted a significant strength. However, there was nothing in the RFP that called for automatically assigning a significant strength on this basis. Thus, Karrar's argument amounts to a disagreement as to the degree of benefit that this feature provided the agency as compared to the benefit provided by BANC3's transition plan. Such disagreement is not sufficient to establish that an evaluation

² Similarly, a proposal could be assigned a rating of outstanding only if it were assigned "numerous" significant strengths. SSEP at 17. The Army's consistent approach in applying the term "numerous" resulted in a proposal with two significant strengths and four strengths under a subfactor being rated good. Source Selection Briefing at 32.

³ Karrar also argues that its and BANC3's proposal were evaluated disparately in various areas of the management evaluation. However, the agency responded to these arguments in its report, and Karrar did not substantively address the agency's response in its comments on the report. Under these circumstances, we consider these arguments abandoned. Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6.

conclusion was unreasonable. See Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 7, 17 (mere disagreement with agency evaluation does not demonstrate that it was unreasonable).

CONFLICT OF INTEREST

As indicated above, the work being performed by the R2 office that the contractor will support is being moved from Fort Monmouth to Aberdeen Proving Ground. The solicitation required offerors to provide a detailed plan outlining how the internal support required under the statement of work would be provided to the R2 office during and after the relocation. In its proposal, BANC3 included a risk assessment and mitigation plan that listed the potential risks inherent in the transition, and its mitigation strategies to deal with those risks. Among the risks identified was a highly competitive labor market in the Aberdeen Proving Ground area. BANC3 proposed to mitigate this risk by, among other things, recruiting the spouses of the relocating C4ISR (R2 is an office within C4ISR) employees to fill support staff positions. BANC3 Proposal at 3. Karrar argues that this plan creates at least the appearance of an improper conflict of interest, because it could unduly influence the evaluators to favorably consider BANC3's proposal.⁴ Karrar asserts that, based on the plan, BANC3 should have been excluded from the competition.

While an agency properly may exclude an offeror from a competition in order to protect the integrity of the procurement system, even if no actual impropriety can be shown, such a determination must be based on facts and not mere innuendo or suspicion. Greenwich Air Serv., Inc., B-277656, Nov. 5, 1997, 97-2 CPD ¶ 159 at 4. In this regard, we consider the appropriateness of such action based on the specific facts presented. Id. We find no improper conflict here. There is no evidence that BANC3 was even aware of the identity of the members of the SSEB, and its proposal stated only a general plan as 1 of 15 risk mitigation strategies, without identifying any individual spouse that it might recruit. Further, Karrar has cited no instance of BANC3's identifying a specific spouse that it intended or attempted to recruit. There thus is nothing to indicate that BANC3 may have promised employment to the spouse of a member of the SSEB. We therefore conclude that Karrar has presented no evidence of an improper conflict that could warrant eliminating BANC3 from the competition.⁵

⁴ Karrar argues that the plan likely violates criminal statutes. Our Office has no jurisdiction over alleged violations of criminal laws. Corbin Superior Composites, Inc., B-236777.2, Jan. 2, 1990, 90-1 CPD ¶ 2 at 6.

⁵ For the same reason, we find no merit to Karrar's argument that the spouse recruiting plan should have precluded BANC3's proposal from being assigned a strength for its risk mitigation plan.

BEST VALUE DETERMINATION

Karrar argues that the agency performed an unreasonable best value determination. According to Karrar, its proposal was substantially superior to BANC3's under the most important technical factor, while BANC3's proposal was only slightly superior to Karrar's under the less important management factor. Karrar concludes that, in selecting BANC3 for award, the agency improperly gave more weight to the management factor than to the more important technical factor.

SSOs have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 6. The propriety of a tradeoff depends not on the mere difference in technical scores or ratings, but on the reasonableness of the SSO's judgment concerning the significance of the difference. Digital Sys. Group, Inc., B-286931, B-286931.2, Mar. 7, 2001, 2001 CPD ¶ 50 at 7.

Here, while the SSO noted that the Aberdeen Proving Ground management subfactor was the most important subfactor, and that BANC3's proposal was rated good under this subfactor, SSD at 6, there is no basis to conclude that she gave the management factor greater weight than the technical factor. Rather, as discussed above, the SSO reviewed the relative weights of the evaluation factors, the adjectival ratings for each subfactor, and the underlying strengths and weaknesses on which those ratings were based. The SSO's resulting conclusion that Karrar's proposal was slightly superior to BANC3's under the technical factor, but that BANC3's proposal was superior to Karrar's under the management factor, formed the non-price side of the tradeoff equation. Balanced against those considerations was Karrar's \$7.9 million (31 percent) higher price. In weighing the two, the SSO concluded that any relative benefit offered by Karrar's proposal was not sufficient to offset its significantly higher price. Id. There was nothing unreasonable in the agency's methodology or conclusion.

The protest is denied.

Gary L. Kepplinger
General Counsel