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Decision

Matter of: CETENAGROUP

File: B-310797; B-310797.3

Date: February 14, 2008

Andrew A. Honegger, Esq., Husch & Eppenberger, LLC, for the protester.
Daniel S. Koch, Esq., David P. Shapiro, Esq., and Tracey L. Perrick, Esq., Paley, Rothman, Goldstein, Eig & Cooper Chartered, for Lincoln Group, LLC, the intervenor.

Lt. Col. David Newsome, Jr., Department of the Army, for the agency.

Nora K. Adkins, Esq., Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency's evaluation of technical proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best methods for accommodating them.

DECISION

CETENAGROUP protests the award of a contract to Lincoln Group, LLC by the Department of the Army under request for proposals (RFP) No. W91B4N-07-R-0060 for services supporting the agency's Joint Improvised Explosive Device Defeat Organization (JIEDDO) information campaign effort.

We deny the protest.

JIEDDO was established to coordinate efforts among agencies to help eliminate the threat posed by improvised explosive devices. To this end, the RFP sought proposals for the synchronized and phased dissemination of approved billboards, flyers, posters, newspaper advertisements, television advertisements, radio messages, 60-minute television programs, and video compact discs in Afghanistan; this campaign seeks to, among other things, separate "the bomb makers and users from the support of the populace" and to "encourage the local populace to take responsibility for their communities and report suspicious activities." Contracting Officer's Statement at 1; RFP, Statement of Work (SOW), at 18.

Issued under the simplified acquisition procedures of Federal Acquisition Regulation (FAR) Subpart 13.5, the RFP provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a 6-month base period and one 6-month option period. Agency Report (AR) at 3. Offerors were informed that award would be made on the basis of a cost/technical tradeoff, and the following evaluation factors were identified: past performance, technical capability, Afghan socioeconomic plan, and price. The non-cost factors were stated to be of equal importance and when combined to be significantly more important than the price. Offerors were also informed that the agency intended to make award without conducting discussions. RFP at 67.

Sixteen offerors, including the protester and awardee, submitted proposals in response to the RFP. CETENAGROUP's and Lincoln Group's proposals were evaluated as follows:

	CETENAGROUP	Lincoln Group
Past Performance	High Confidence	High Confidence
Technical Capability	Exceptional	Very Good
Afghan Socioeconomic Plan	Very Good	Very Good
Price	\$17.8 million	\$14.3 million

AR, Tab 23, Source Selection Decision, at 11. The source selection authority (SSA) concluded that although CETENAGROUP's proposal was rated higher under the technical capability factor than was Lincoln Group's, this superior technical evaluation rating did not outweigh Lincoln Group's \$3.5 million price advantage. Id. at 12.

Award was made to Lincoln. Following a debriefing, CETENAGROUP filed an agency-level protest, which the Army denied. AR at 2. This protest to our Office followed.

CETENAGROUP argues that Lincoln Group's proposal should have been found to be unacceptable under the technical capability factor, because Lincoln Group did not specifically provide a dissemination plan for newspaper advertisements, which the protester argues was required by the RFP.¹ Supplemental Protest at 1.

The evaluation of technical proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best methods for

¹ CETENAGROUP also challenged the agency's assignment of a "high confidence" rating for Lincoln's past performance. Because the agency responded to these allegations in its report and the protester did not address the Agency's response in the firm's comments, we consider this protest ground to be abandoned. Dynamic Instruments, Inc., B-291071, Oct. 10, 2002, 2002 CPD ¶ 183 at 4.

accommodating them. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. Our Office will review a challenge to an agency's evaluation of a proposal only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Manassas Travel, Inc., B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 2-3. A protester's mere disagreement with the agency's judgment in its determination of the relative merits of competing proposals does not establish that the evaluation was unreasonable. SDS Int'l. Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6.

Here, the RFP instructed offerors to address in their proposals under the technical capability factor the firms' plans to "achieve the widest dissemination of print, TV, and radio messages." RFP at 65. In this regard, the SOW described the dissemination of print, radio and television products. Advertising in a newspaper was but one of the print products identified in the SOW. SOW at 19-21. In addition to providing a comprehensive distribution plan, offerors were instructed to provide product samples of posters, flyers, and newspaper, television, and radio advertisements. RFP at 68.

The Army found that Lincoln Group's proposal provided a dissemination plan that addressed print, TV, and radio messages, and in particular exceeded the RFP's requirements for television media dissemination. The agency also found that Lincoln Group had provided product samples, including a newspaper advertisement, which satisfied the RFP requirements. [DELETED]. The SSA also recognized, however, that Lincoln Group did not specifically address dissemination of newspaper advertisements in its discussion of print media distribution, which the SSA found was a proposal weakness, and on this basis assigned Lincoln Group's proposal a "very good" as opposed to an "excellent" rating under the technical capability factor. AR, Tab 23, Source Selection Decision, at 6.

We find that the agency reasonably evaluated Lincoln Group's proposal in accordance with the solicitation's evaluation criteria. Although it is true that Lincoln Group did not specifically address the dissemination of newspaper advertisements in its print media distribution plan, the firm otherwise provided a plan that satisfied the solicitation print media dissemination requirements, including providing an acceptable newspaper advertisement sample. Therefore, we do not agree with the protester that the Army acted unreasonably in finding that Lincoln Group's proposal was acceptable. To the extent that CETENAGROUP believes that Lincoln Group's proposal should have received a lower evaluation rating under this factor, we find the protester's arguments to be nothing more than a mere disagreement with the agency's evaluation, which does not render the agency's evaluation unreasonable. See SDS Int'l. Inc., *supra*, at 6.

CETENAGROUP also challenges the Army's evaluation of CETENAGROUP's and Lincoln Group's proposals under the Afghan socioeconomic plan factor, for which both proposals received "very good" ratings. CETENAGROUP argues that its

proposal should have been rated superior to Lincoln Group's, because CETENAGROUP is the "quintessential" Afghan business while Lincoln Group is an American-owned company that is "0.0% Afghan-owned and has not developed longstanding business relationships with the Afghan community." Protest at 4.

With respect to this evaluation factor, offerors were instructed to describe their plans to "maximize the utilization and training of, and transfer of knowledge, skills and abilities to the Afghan workforce; as well as the proposed utilization of Afghan subcontractors and businesses." RFP at 66. In this regard, the solicitation informed offerors that their proposals would

be evaluated on the planned utilization and training of, and transfer of knowledge, skills and abilities to the Afghanistan workforce; as well as the proposed utilization of Afghanistan subcontractors and businesses. The rating an offeror receives will be determined by the proposal detailing the combined degree of involvement in the key areas listed below. Offerors are not required to have involvement in each key area to achieve a particular rating, and each key area is independent of the others.

Id. at 69. The solicitation identified evaluation ratings from "excellent" to "unsatisfactory" that a proposal could receive under this factor, and stated that, a "very good" rating would reflect a proposal that demonstrated

substantial present and future Afghan participation. Key areas include Afghan: business ownership, senior and mid-level management, labor, employee training, and subcontracting. The proposal contains substantial detail of the various key areas indicated above.

Id.

In its evaluation of proposals, the agency recognized that CETENAGROUP is wholly Afghan-owned and that Lincoln Group is not, but also recognized that Lincoln Group had proposed as a team member, [DELETED]. See Lincoln Group Technical Capability Proposal at 6. CETENAGROUP does not dispute that [DELETED] in Afghanistan but argues that the Army should nevertheless not have rated Lincoln Group's proposal as "very good" under this factor because "subcontracting" was identified as only one of five key areas to be considered to receive this rating.

We find no basis to object to the agency's evaluation. The agency found that Lincoln Group's proposal was replete with information demonstrating its substantial present and future Afghan participation. Not only is Lincoln Group's teaming partner, [DELETED]. The Army also found that Lincoln Group's proposal provided detailed information on its [DELETED]. See AR, Tab 23, Source Selection Decision, at 10. Since there is nothing in the RFP that limits the prime contractor's use of a teaming

partner or subcontractor to satisfy the solicitation requirements, see RFP amend. 2, at 2, question 4 (“Teaming and/or partnerships are highly encouraged”), we find that the agency’s assignment of “very good” to Lincoln Group’s proposal was reasonable.

CETENAGROUP also complains that it was misled when, before the receipt of proposals, the Army amended the RFP to reduce the stated maximum contract value from \$20 million to \$11 million.² See RFP amend. 2, at 5, question 18.

CETENAGROUP contends that it was informed by the Army, in response to CETENAGROUP’s inquiry, that reducing the maximum contract value should have no impact on the offeror’s pricing, and that this caused CETENAGROUP to not propose a lower price. Protest at 8-10. CETENAGROUP also complains that the Army unreasonably did not “mold its evaluation to accommodate its last minute change in reducing the maximum to \$11 million.” Comments at 4.

We find, even viewing the protester’s arguments in a light most favorable to CETENAGROUP, that CETENAGROUP fails to demonstrate a reasonable possibility of prejudice, which is a requirement of every viable protest. See Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7. Here, CETENAGROUP has provided nothing more than a general assertion that it could have lowered its proposed price by some unspecified amount. Given Lincoln Group’s \$3.5 million price advantage, we find that this does not satisfy the protester’s obligation to show a reasonable possibility that it was competitively prejudiced.

To the extent that the protester contends that the agency failed to adjust the RFP’s price evaluation scheme to conform to the reduced contract value, this argument is untimely. As noted above, RFP amend. 2, which reduced the maximum contract value from \$20 million to \$11 million, was issued prior to the closing date for the receipt of initial proposals. Our Bid Protest Regulations require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1) (2007).

The protest is denied.

Gary L. Kepplinger
General Counsel

² FAR § 13.500(e) provides that simplified acquisition procedures may be used for acquisitions that do not exceed \$11 million where the acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack.