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Decision

Matter of: Science Applications International Corporation

File: B-413501; B-413501.2

Date: November 9, 2016

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DIGEST

1. Protest of agency's evaluation of technical proposals is denied where the record reflects the evaluation was reasonable and consistent with the solicitation's terms and the applicable procurement statutes and regulations.
 2. Protest of agency's decision not to conduct discussions under Defense Federal Acquisition Regulation Supplement § 215.306(c), which provides that contracting officers "should" open discussions in procurements valued over \$100 million, is denied where the solicitation advised the agency would make award without discussions if possible, and where the record shows the agency reasonably determined the awardee's technically superior, reasonably-priced proposal represented the best value to the government.
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DECISION

Science Applications International Corporation (SAIC), of McLean, Virginia, protests the award of a contract to Battelle Memorial Institute, of Columbus, Ohio, by the United States Special Operations Command under request for proposals (RFP) No. H92222-15-R-0037 for nonstandard commercial vehicles modified for special operations use. SAIC alleges that the agency's evaluation of proposals was unreasonable and that its decision not to conduct discussions was improper.

We deny the protest.

BACKGROUND

The solicitation, issued on December 1, 2015, contemplated the award of an indefinite-delivery, indefinite-quantity contract with fixed-price, cost, and cost-plus-fixed-fee contract line item numbers. RFP at 1-83, 166. The contract was to have a base ordering period of five years and a two-year option period. Id. at 2. The minimum and maximum ordering amounts under the contract were to be \$2,500 and \$170 million, respectively. Id.

The solicitation included a statement of work (SOW) and performance specification that established numerous requirements for the needed vehicles. Among other things, the SOW provided that the vehicles, as modified, were to “retain the Original Equipment Manufacturer’s (OEM) profile while supporting the integration of armor, heavy-duty suspension and brakes, run flat tires/wheels, and communication equipment.” SOW at 2.

The solicitation provided that the award would be made on a best-value tradeoff basis and explained the evaluation process as follows. Proposals would be evaluated against a number of “qualifying criteria” and rated either acceptable or unacceptable.¹ RFP at 181. Proposals also would be evaluated under the following three “areas”: technical/management, past performance, and price. Id. In terms of weight, the technical/management area was said to be significantly more important than past performance, and the past performance area was said to be significantly more important than price. Id.

The technical/management area included two factors: vehicle configuration and management approach. RFP at 181. The vehicle configuration factor was said to be significantly more important than the management approach factor. Id. In addition, the management approach factor included the following three subfactors, listed in descending order of importance: design and production process; quality assurance, process control, and logistics; and management plan. Id. The solicitation stated that under the technical/management area, proposals would be assigned adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable, and that under the past performance area, proposals would be assigned adjectival ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). Id. at 185-88. The solicitation also stated that the assessment of a deficiency under any area, factor,

¹ The qualifying criteria included facility clearance, contract forms and certifications, and small business subcontracting plan. RFP at 182. The solicitation stated that a proposal rated unacceptable under the qualifying criteria “may be determined ineligible for award.” Id.

or subfactor “may cause the proposal to be excluded from consideration for award.” RFP at 181.

The solicitation incorporated by reference a number of standard Federal Acquisition Regulation (FAR) provisions, including, as relevant here, the provision at FAR § 52.215-1, Instructions to Offerors--Competitive Acquisition (Jan., 2004). RFP at 166. Among other things, this provision notifies offerors of an agency’s intent to make award without discussions. FAR § 52.215-1(f)(4). It cautions that “the offeror’s initial proposal should contain the offeror’s best terms from a cost or price and technical standpoint,” but it also states that the agency “reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary.” *Id.* Consistent with this provision, the solicitation also included a statement that the agency “may” establish a competitive range and open discussions. RFP at 168.

The agency received a number of proposals by the solicitation’s closing date, including proposals from SAIC and Battelle. Contracting Officer’s Statement at 6. A source selection evaluation board (SSEB) evaluated the proposals and assessed strengths, weaknesses, significant weaknesses, and deficiencies under the technical/management area factors and subfactors. Agency Report (AR), Tab 8, SSEB Rep., at 5-6. Numerous strengths and weaknesses were assessed to both SAIC’s and Battelle’s proposals. However, SAIC’s proposal was assessed five significant weaknesses and three deficiencies, whereas no significant weaknesses or deficiencies were assessed to Battelle’s proposal. *Id.* at 29; AR, Tab 17, SSEB Rep., App. E, at 2. Following the evaluation, the SSEB assigned adjectival ratings to the proposals. The table below shows the ratings for SAIC’s and Battelle’s proposals as well as the firms’ total evaluated prices.

	SAIC	BATTELLE
Qualifying Criteria	Unacceptable	Acceptable
Area 1 - Technical/Management	Marginal	Good
Factor 1 - Vehicle Configuration	Unacceptable	Good
Factor 2 - Management Approach	Good	Good
Subfactor 1 - Design & Production Process	Good	Good
Subfactor 2 - Quality Assurance, Process Control & Logistics	Marginal	Marginal
Subfactor 3 - Management Plan	Good	Good
Area 2 - Past Performance	Satisfactory Confidence	Substantial Confidence
Area 3 - Price	\$205,900,710	\$212,665,838

AR, Tab 8, SSEB Rep., at 25.

As the table reflects, SAIC's proposal was evaluated as unacceptable under the qualifying criteria, whereas Battelle's was evaluated as acceptable.² As the table also reflects, SAIC's proposal was evaluated as marginal under the technical/management area, and unacceptable under the vehicle configuration factor--the two most heavily weighted components of the evaluation. Battelle's proposal, on the other hand, was evaluated as good under both the technical/management area and the vehicle configuration factor. Finally, SAIC's total evaluated price was approximately \$6.7 million (or 3 percent) lower than Battelle's total evaluated price.

After reviewing the SSEB's evaluation results, a source selection advisory council (SSAC) prepared a comparative analysis and award recommendation for the source selection authority (SSA). AR, Tab 10, SSAC Comparative Analysis. The SSAC recommended the award be made to Battelle based on the evaluated superiority of that firm's proposal, particularly under area 1, technical/management, the most heavily weighted area in the evaluation. Id. at 13-15. The SSAC commented that although SAIC's evaluated price was somewhat lower than Battelle's, the price premium associated with Battelle's proposal was warranted due to various technical benefits associated with that proposal, and because the deficiencies assessed to SAIC's proposal rendered it "unawardable." Id. at 15. The SSAC also noted that Battelle's total evaluated price was found to be reasonable and only slightly above (1.7 percent) the independent government cost estimate (IGCE). Id. at 13, 15. Finally, the SSAC recommended against conducting discussions, documenting the basis for this as follows:

The SSAC does not believe that the benefit of setting a competitive range and opening discussions outweighs the benefit of awarding without discussions to a clearly superior Technical/Management proposal, with Substantial Past Performance, and fair and reasonable pricing received in competition and within a valid range of the IGCE.

Id. at 15.

After being briefed by the SSAC, the SSA reviewed the evaluation findings and documented a source selection decision. AR, Tab 11, Source Selection Decision Document (SSDD), at 4. In the decision, the SSA discussed numerous specific benefits of Battelle's technical/management approach. Id. at 4-5. The SSA also found that Battelle's proposal represented the best value based on "significant benefits [offered] to the Government at low risk to both performance and schedule," and at a reasonable price. AR, Tab 11, SSDD, at 4-5. Accordingly, the SSA

² SAIC's proposal was evaluated as unacceptable because the firm failed to submit a form regarding the use of foreign persons in the performance of the contract. See AR, Tab 8, SSEB Rep., at 12.

adopted the SSAC's recommendations that the award be made to Battelle, without conducting discussions. See AR, Tab 11, SSDD, at 4-6.

Following a debriefing, SAIC filed a protest with our Office.

DISCUSSION

SAIC alleges that the agency's evaluation of proposals under the technical/management area was unreasonable and that its decision not to conduct discussions was improper. We have considered all of SAIC's arguments, and we conclude, based on the record, that none furnishes a basis on which to sustain the protest. Below, for purposes of illustration, we discuss a number of the firm's contentions.

Technical/Management Evaluation

SAIC argues that the agency unreasonably evaluated both SAIC's and Battelle's proposals under the technical/management area. In this regard, the firm contends that various weaknesses assessed to Battelle's proposal under the quality assurance, process control, and logistics subfactor should have been assessed as deficiencies. SAIC also contends that one significant weakness and all three of the deficiencies assessed to its own proposal under the vehicle configuration factor were unreasonable.

In reviewing an agency's evaluation, we do not conduct a new evaluation or substitute our judgment for the agency's, but, instead, examine the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria. See Gella LLC, B-409917.11, Jan. 6, 2016, 2016 CPD ¶ 14 at 2-3; West Constr., Inc., B-406511, June 15, 2012, 2012 CPD ¶ 184 at 4. A protester's disagreement with an agency's evaluation, without more, provides no basis to question the reasonableness of the evaluators' judgments. See Gella LLC, supra, at 3; West Constr., Inc., supra, at 5. Here, as reflected by the following examples, we have reviewed the record and see no basis to question the agency's evaluation under the technical/management area.

SAIC's first allegation concerns a weakness assessed to Battelle's proposal under the quality assurance, process control, and logistics subfactor that the SSEB documented as follows:

Per [RFP §] L.3.2.2.2, the offeror shall provide sample work instructions required to install an aftermarket rear shock

The proposal provided insufficient Work Instructions for installation of the aftermarket rear shock. The proposal provides a sample work instruction for installing the rear shocks. However, the work

instructions were very basic and did not contain detailed procedural steps, nor were there installation notes provided, and no equipment/tools were identified as required. . . . This presents risk to the Government, as the proposal has not demonstrated an accurate and detailed mechanical work instruction can be created for maintaining consistent production of vehicles.

AR, Tab 17, SSEB Rep., App. E, at 4. SAIC argues that this weakness shows Battelle's proposal failed to meet an "incredibly important" requirement of the solicitation and that the failure, therefore, was material. Supp. Comments at 8. On this basis, SAIC contends that it was unreasonable for the agency to "assess anything other than a deficiency" regarding the issue. Id.

In response, the contracting officer states that in assessing weaknesses, significant weaknesses, and deficiencies, the SSEB used the following definitions:

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance.

Significant Weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

Deficiency is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Contracting Officer's Supp. Statement at 18.³ The contracting officer further states that the SSEB did not assess a deficiency because Battelle met the requirement for providing sample work instructions. Id. The weakness arose, she explains, because the instructions included a flaw (a lack of detail), which increased the risk of unsuccessful performance. Id.

Based on the record, we find the agency's assessment of a weakness rather than a deficiency consistent with the terms of the solicitation and reasonable. As stated in the SSEB's narrative for the weakness, the solicitation required the submission of sample work instructions for the installation of aftermarket rear shock absorbers. AR, Tab 17, SSEB Rep., App. E, at 4 (quoting RFP at 176). The record reflects that Battelle's proposal included such instructions, and that the instructions provided steps for installation, parts lists, and photographs of the assemblies. AR, Tab 17,

³ The SSEB report includes these definitions and states that they were followed. AR, Tab 8, SSEB Rep., at 6. The definitions are identical to those found at FAR § 15.001.

SSEB Rep., App. E, at 4; AR, Tab 16, Battelle Proposal, Vol. II, Technical/Management, at 9-11.

As shown above, a deficiency in this procurement was defined as “a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” AR, Tab 8, SSEB Rep., at 6. Given that Battelle’s proposal included sample work instructions--albeit without the level of detail desired by the SSEB--we see no merit in SAIC’s contention that it was improper for the agency to assess a weakness rather than a deficiency.

As a second example of SAIC’s challenges in the technical/management area, the firm claims that the agency’s assessment of a deficiency to SAIC’s own proposal under the vehicle configuration factor was unreasonable. The SSEB documented the deficiency as follows:

Per [RFP §] L.3.2.1.2 offerors were required to detail how they intend to integrate armor onto the proposed vehicle chassis.

The proposal fails to provide detail to determine whether the windshield retention requirement is properly met per [performance specifications] 2.3.6.a and 2.9.6.a. The Government is unable to determine how the front windshield . . . is integrated [DELETED] and . . . what (if any) retention measures are taken to prevent the windshield from falling inward. This lack of detail poses high risk to the Government, as not restraining the windshield in a blast situation or rollover event directly leads to loss of life for both the driver and front passenger.

AR, Tab 8, SSEB Rep., at 39. SAIC argues the deficiency was unreasonable because the “[a]gency failed to recognize that windshield retention was accounted for in the armor design by [DELETED].” Comments at 15; Supp. Comments at 21. In support of this argument, SAIC cites two pages in the technical/management volume of its proposal. Comments at 15 (citing AR, Tab 7, SAIC Proposal, Vol. 2, Technical/Management, at 94, 115); Supp. Comments at 21 (same).

In response, the contracting officer states that the performance specification referenced in the deficiency required that “[i]nterior stops shall be provided that prevent the windshield from falling inward in the event of a catastrophic failure.” Contracting Officer’s Supp. Statement at 13 (quoting AR, Tab 6, Performance Specification, at 6, 17). The contracting officer further states that SAIC’s proposal did not include information regarding the firm’s approach to the windshield retention requirement. Id. For this reason, she states, the SSEB viewed the proposal as having failed to meet the requirement and assessed the deficiency. See id.

We see no basis to question this aspect of the evaluation. The vehicle configuration factor evaluation criteria included consideration of “the extent to which the offeror’s proposal demonstrates the ability to meet the survivability requirements [in accordance with] the SOW, Performance Specification, and Classified Annex.” RFP at 183. As the contracting officer has pointed out, the solicitation’s performance specification required “[i]nterior stops . . . that prevent the windshield from falling inward in the event of a catastrophic failure.” AR, Tab 6, Performance Specification, at 6, 17. SAIC has not shown--and it is not apparent to us--that its proposal adequately demonstrated compliance with this requirement. The proposal pages cited by the firm consist of a chart that apparently shows [DELETED]. AR, Tab 7, SAIC Proposal, Vol. 2, Technical/Management, at 94, 115. Neither page shows or discusses windshield retention measures. See id. On this record, we find the SSEB’s assessment of the deficiency to have been reasonable and consistent with the solicitation. SAIC’s claims regarding the agency’s evaluation of proposals under the management/technical area are denied.⁴

Discussions

SAIC argues that the agency abused its discretion by making the award without conducting discussions. Protest at 7-11; Comments at 2-12; Supp. Comments at 2-4. Had the agency conducted discussions, SAIC contends, the firm could have corrected the deficiencies assessed to its proposal and addressed other adverse evaluation findings. Protest at 11-15. SAIC recognizes that our Office generally does not review an agency’s decision to make award without conducting discussions. Id. at 7 (citing Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3). SAIC argues that we nevertheless should consider its allegation because our practice in this area rests in part on findings in prior decisions that there are “no statutory or regulatory criteria specifying when an agency should or should not initiate discussions.” Id. (quoting Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5; ITT Sys. Corp., B-405865, B-405865.2, Jan. 6, 2011, 2012 CPD ¶ 44 at 3 n.3; Kiewit Louisiana Co., supra). SAIC points out that after these decisions were issued, the Department of Defense (DoD) promulgated Defense Federal Acquisition Regulation Supplement (DFARS) § 215.306(c), which states that “[f]or acquisitions with an estimated value of

⁴ SAIC also alleges that the agency unequally evaluated SAIC’s and Battelle’s proposals under the technical/management area. Specifically, SAIC argues that the SSEB documented concerns regarding a lack of details for both proposals, yet only SAIC’s proposal was assessed deficiencies for these issues. Comments at 24-25; Supp. Comments at 7, 11. We see no merit in these claims due to differences in the evaluation criteria for the factors at issue and distinctions in the SSEB’s descriptions of its concerns.

\$100 million or more, contracting officers should conduct discussions.”⁵ Protest at 8.

Based on this regulation, and the fact that this is a DoD procurement valued over \$100 million, SAIC argues that our Office should review the agency’s decision not to conduct discussions here. SAIC further argues that due to the complexity and high dollar value of this procurement, the agency’s decision not to conduct discussions was improper. Protest at 10; Comments at 4. Finally, SAIC argues that the policy underlying DFARS § 215.306(c) dictates that discussions should have been conducted in this procurement.⁶ Protest at 8-9; Comments at 6, 9-10.

We agree with SAIC that DFARS § 215.306(c) provides a basis for our Office to review the agency’s actions here.⁷ We begin our review by observing that the operative word in the regulation is “should” and that FAR § 2.101 defines the word “should” to mean “an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.” Thus, DFARS § 215.306(c) is reasonably read to mean that discussions are the expected course of action in DoD

⁵ DFARS § 215.306(c) states, in its entirety, as follows: “For acquisitions with an estimated value of \$100 million or more, contracting officers should conduct discussions. Follow the procedures at FAR 15.306(c) and (d).” FAR § 15.306(c) and (d) address the establishment of a competitive range and exchanges with offerors in the competitive range.

⁶ As related to this argument, the Federal Register notice in which DoD initially proposed the regulation included the following comment:

[F]ailure to hold discussions in high-dollar value, more complex source selections has led to misunderstandings of Government requirements by industry and flaws in the Government’s evaluation of offerors’ proposals, leading to protests that have been sustained, and ultimately extending source-selection timelines. DoD proposes to decrease the possibility of this outcome by making such discussions the default procedure for source selections for procurements at or above \$100 million. However, use of the term “should,” as defined in FAR part 2, provides that the expected course of action need not be followed if inappropriate for a particular circumstance.

75 Fed. Reg. 71,647-48 (Nov. 24, 2010).

⁷ In each published decision where our Office has addressed this regulation, it was found inapplicable to the procurement under protest, and, thus, we did not review the agency’s actions under the regulation. See CACI Techs., Inc., B-411282, June 18, 2015, 2015 CPD ¶ 185 at 4; Tyonek Worldwide Servs., Inc.; DigiFlight, Inc., B-409326 et al., Mar. 11, 2014, 2014 CPD ¶ 97 at 16 n.9.

procurements valued over \$100 million, but that agencies retain the discretion not to conduct discussions if the particular circumstances of the procurement dictate that making an award without discussions is appropriate. From this, we see the inquiry here to be whether the record shows, given the particular circumstances of this procurement, that there was a reasonable basis for the agency's decision not to conduct discussions.

In response to SAIC's protest, the agency points out that the solicitation cautioned offerors to submit their best price and technical terms in their initial proposals because the agency intended to make the award without discussions, if possible. See Mem. of Law at 4. The agency argues that this admonition, together with the disparity in the evaluated technical merit of the proposals, and the fact that Battelle's pricing was found to be reasonable, shows the agency reasonably exercised its discretion under DFARS § 215.306(c) to forgo discussions. See id. at 9-10. Under the circumstances here, we agree with the agency.⁸

As discussed above, the solicitation provided for the evaluation of proposals under the "qualifying criteria" and three areas--technical/management, past performance, and price. RFP at 181. The technical/management area was weighted as significantly more important than the other two areas, and technical/management area factor 1, vehicle configuration, was weighted as significantly more important than the other area 1 factor. Id. As also discussed above, the solicitation advised that the assessment of a deficiency under any of the areas or factors "may cause" a proposal to be excluded from consideration for award. Id.

After the evaluation, SAIC's proposal was assigned a rating of unacceptable under the qualifying criteria, a rating of marginal under the technical/management area, and a rating of unacceptable under the vehicle configuration factor. AR, Tab 8, SSEB Rep., at 25. Further, SAIC's proposal was assessed three deficiencies and five significant weaknesses under the technical/management area. Id. at 29. In contrast, Battelle's proposal was assigned a rating of acceptable under the qualifying criteria, a rating of good under the technical/management area, and a rating of good under the vehicle configuration factor. Id. at 25. Further, no

⁸ Citing the rule in our Bid Protest Regulations that protests based on alleged improprieties in a solicitation must be filed before the time set for the receipt of initial proposals, the agency also argues that because the solicitation included a provision notifying offerors of the agency's intent to make award without discussions, SAIC's claim regarding discussions is untimely. Agency Request for Dismissal at 3-4 (citing 4 C.F.R. § 21.2(a)(1); RFP at 168). We disagree. The solicitation provision cited by the agency also stated that the agency reserved the right to open discussions, as did a second, separate solicitation provision. RFP at 166, 168. Accordingly, SAIC was not required to raise its claim until it became evident that the agency had, in fact, decided not to conduct discussions.

deficiencies or significant weaknesses were assessed to Battelle's proposal. AR, Tab 17, SSEB Rep., App. E, at 2. Upon reviewing the evaluation findings, the SSAC concluded that conducting discussions was not warranted based on Battelle's superior technical/management proposal, its substantial confidence past performance rating, and its reasonable price. See AR, Tab 10, SSAC Comparative Analysis, at 13-15. The SSA adopted this recommendation.

We previously have found an agency's decision not to conduct discussions to be reasonable where the record showed there were deficiencies in the protester's proposal, the awardee's proposal was evaluated as being technically superior to the other proposals, and the awardee's price was reasonable. See Richard M. Milburn High Sch., B-277018, Aug. 19, 1997, 97-2 CPD ¶ 53 at 6; Int'l Data Prods., Corp. et al., B-274654 et al., Dec. 26, 1996, 97-1 CPD ¶ 34 at 10-11; Stabro Labs., Inc., B-256921, Aug. 8, 1994, 94-2 CPD ¶ 66 at 2, 5. Although those cases pre-date DFARS § 215.306(c), we find the principle applicable here. SAIC's proposal was assessed a number of deficiencies under the most heavily-weighted components of the evaluation, and any one of these deficiencies provided a basis to eliminate the firm from the competition under the terms of the solicitation. Battelle's proposal, on the other hand, was evaluated as technically superior under the most heavily weighted components of the evaluation, and it was seen as offering "significant benefits to the Government at low risk to both performance and schedule," and at a reasonable price. AR, Tab 11, SSDD, at 4-5. On this record, we view as reasonable the agency's decision to exercise the discretion it is afforded under DFARS § 215.306(d) to forgo discussions.

The protest is denied.

Susan A. Poling
General Counsel