



Decision

Matter of: Special Services

File: B-402613.2; B-402613.3

Date: July 21, 2010

Adrian H. Garcia for the protester.

Antonio T. Robinson, Esq., Department of Agriculture, for the agency.

Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where award was made consistent with the terms of the solicitation and the agency's mathematical error in calculating vendors' overall point scores did not result in competitive prejudice to the protester.

DECISION

Special Services, of Los Angeles, California, protests the award of a contract to AG Forest Services, Inc., of Cambria, California, under request for quotations (RFQ) No. AG-0267-S-10-0001 issued by the Department of Agriculture, U.S. Forest Service, for national visitor use monitoring at Sawtooth National Forest, Idaho.

We deny the protest.

BACKGROUND

The RFQ, issued as a commercial item acquisition set-aside for small businesses, sought quotations for surveys of visitor satisfaction and recreational usage to be conducted between May 10, 2010, and September 30, 2010, at Sawtooth National Forest. RFQ, Statement of Work (SOW), at 19. Vendors were informed that award would be made to the vendor whose quotation was found to be most advantageous to the government, price and other factors considered. The RFQ identified the following technical evaluation factors and their relative weights: past performance (50%), technical approach (40%), and experience of key personnel (10%). The technical factors were stated to be, when combined, approximately equal in weight to price. *Id.* at 32-33. With respect to price, vendors were to submit a single total price for conducting the surveys. *Id.* at 18.

The Forest Service received four quotations, including Special Services' quotation of \$120,780 and AG Forest's quotation of \$70,744. The quotations were evaluated by a three-person technical evaluation board (TEB). Each evaluator rated the quotations by assigning a point score and adjectival rating under each technical evaluation factor.¹ See Agency Report (AR), Tab 10, TEB Evaluations; Tab 11, TEB Recommendation. To calculate a total technical score under each factor, the TEB averaged the three evaluators' point scores for that factor. Despite the differing weights for the factors in the solicitation, the TEB calculated overall point scores by simply averaging all of the factor point scores. See *id.*, Tab 10, TEB Evaluations; Legal Memorandum at 4. A corresponding adjectival rating was assigned based upon the overall point score.

At the conclusion of the evaluation, Special Service's quotation received an overall 91.4 point score, which merited an exceptional rating, as follows:

	Past Performance	Technical Approach	Key Personnel	Overall Score
Evaluator A	88	90	97	
Evaluator B	90	90	95	
Evaluator C	88	91	94	
Average	88.6	90.3	95.3	91.4

See AR, Tab 12, Contracting Officer's Award Determination, at 5. AG Forest's quotation received 94.86 points, which was the highest overall point score, and an overall exceptional rating. The TEB also provided narrative comments identifying strengths and weaknesses for each vendor. *Id.*, Tab 11, TEB Recommendation.

The TEB concluded that the protester's price of \$120,780 was "extremely high for the task at hand" and that its experience and quotation did not merit the increased cost.² In contrast, the TEB concluded that AG Forest's price of \$70,744 was "extremely

¹ Quotations were evaluated as either: excellent (88-100), acceptable (76-87), marginal (64-75), or unacceptable (0-63). A quotation received an "excellent" rating if it was found to comply with all submission instructions and included additional information that indicated consistent, high-quality performance could be expected from the contractor, and that one or more items of past experience in this criterion exceeded the acceptable or minimum requirement. The highest rating is variously referred to as "excellent" or "exceptional" throughout the record, though the corresponding score range (88-100) is consistent.

² Although not required by the RFQ, the protester's quotation included an "estimated budget breakdown" of wages, travel, supplies, and "other" expenses, as well as direct and indirect costs. AG Forest did not provide similar information.

reasonable,” and recommended that award be made to AG Forest, the vendor with the highest overall point score and lowest price. Id. at 9.

The contracting officer selected AG Forest Service’s quotation for award, stating that price had become the deciding factor in her best value determination. Id., Tab 12, Contracting Officer’s Award Determination, at 8. With respect to the protester’s higher price, the contracting officer stated that the protester’s quotation was “considered to have unbalanced pricing for the level of effort required for this project.” Id. at 7.

Following a debriefing and an agency-level protest, Special Services protested to our Office.

DISCUSSION

Special Services generally challenges the agency’s technical evaluation of its quotation. Specifically, the protester objects to the point scores assigned to its quotation under each of the factors and challenges the weaknesses identified by the agency.

In response, the Forest Service provided contemporaneous documents supporting its evaluation and contends that it reasonably evaluated Special Services’ quotation under each of the evaluation factors. In this regard, the agency explains the bases for its assigned weaknesses in Special Services’ quotation, and notes that, notwithstanding the identified weaknesses, the protester’s quotation received an exceptional rating. See Contracting Officer’s Statement at 3-5. The Forest Service acknowledged, however, that the TEB erred in its calculation of the firms’ overall technical point scores. Specifically, the agency states that the TEB improperly averaged the point scores for each evaluation factor without accounting for the weighting of the factors. See id. at 3; Legal Memorandum at 4. Nonetheless, the agency contends that Special Services was not prejudiced by this mathematical error because the application of the correct weighting does not change the firms’ relative technical standing.

In its comments, apart from an expression of general disagreement with the agency’s evaluation, the protester does not address the Forest Service’s explanation in support of the weaknesses identified in Special Services’ quotation.³ The protester’s general disagreement does not show that the agency’s evaluation was unreasonable

³ Special Services appears to contend that the Forest Service inadequately documented its evaluation and selection decision. See Comments at 2. We do not agree. Rather, the contemporaneous documents in the record explain the bases for the evaluators’ judgments and the contracting officer’s selection decision.

or not in accord with the solicitation. See Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288 at 3.

With respect to the agency's mathematical error in calculating the technical point scores, we agree with the Forest Service that the record does not show that the protester was prejudiced by the error. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the agency's evaluation of proposals are found. See TMM Inv., Ltd., B-402016, Dec. 23, 2009, 2009 CPD ¶ 263 at 4; see, e.g., Restoration & Closure Servs., LLC, B-295663.6, B-295663.12, Apr. 18, 2005, 2005 CPD ¶ 92 at 6-7.

Our review shows that applying the appropriate weighting to point scores assigned to the protester's and awardee's quotations lowers the protester's score more than it does the awardee's scores. Specifically, Special Services' overall technical point score decreases from 91.4 to 89.95 points, and AG Forest's point score decreases from 94.86 to 94.77 points. In short, AG Forest's quotation remains the highest-rated and lowest-priced quotation by an even wider margin than before the scores were corrected. Geonex Corp., B-274390.2, June 13, 1997, 97-1 CPD ¶ 225 at 5 (no prejudice from evaluation flaw where record establishes that, even if protester had received the maximum possible score under factor containing the evaluation flaw, protester would not be in line for award). See also HG Properties A, L.P., B-277572, et al., Oct. 29, 1997, 97-2 CPD ¶ 123 at 6.

The protester also complains that the agency unreasonably found that the protester's quotation was unbalanced.

As noted above, the contracting officer stated in her award determination that she found that the protester's quotation was materially unbalanced.⁴ We conducted a telephone hearing to receive testimony from the contracting officer regarding this statement. The contracting officer explained that she erroneously used the term "unbalanced pricing" to describe her price analysis, which she conducted prior to the TEB's technical evaluations. See Audio Recording at 2:25-3:15, 4:28-4:51. She stated that she only meant to indicate that Special Services' quoted price was high in comparison to the other quotations received and the government estimate. See id. at 3:39-3:58. The contracting officer also stated that she did not base her selection

⁴ By definition, unbalanced pricing exists where an offeror's prices for one or more of its line items are significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). See Federal Acquisition Regulation (FAR) § 15.404-1(g)(1); JND Thomas Co., Inc., B-402240, Jan. 28, 2010, 2010 CPD ¶ 40 at 2. Here, there can be no unbalanced pricing because the solicitation listed only one line item. See RFQ at 18.

decision upon an “unbalanced pricing” determination and that she did “little or nothing” with the protester’s estimated budget breakdown. See id. at 6:05-6:39, 8:38-8:51. We find no basis in this record to conclude that the contracting officer’s erroneous reference to unbalancing affected the selection decision.

Special Services also complains, citing FAR part 14, that, given the much lower quoted-prices of the other vendors, the contracting officer should have examined all quotations for mistakes. See Supplemental Protest at 3. We again find no merit to this argument. This procurement was conducted pursuant to the commercial acquisition procedures of FAR part 12, and was not a sealed bid acquisition conducted under FAR part 14. Moreover, the protester does not assert that AG Forest’s or any other vendor’s quotation actually contains mistakes.

In sum, the record shows that the agency reasonably made award to AG Forest, the vendor with the highest-rated and lowest priced quotation.

The protest is denied.

Lynn H. Gibson
Acting General Counsel