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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: A-Tek, Inc.

File: B-404581.3

Date: August 22, 2011

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Heather M. Self, Esq., Department of Agriculture, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging that discussions were unequal and misleading is denied where the agency's discussion items led each offeror to the areas of the agency's concern.
 2. Protest challenging technical evaluation is denied where the only error identified in the evaluation occurred in the second least important technical evaluation factor such that the error raised no realistic possibility of competitive prejudice.
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DECISION

A-TEK, Inc., of Leesburg, Virginia, protests the award of a contract to The Engle Group (TEG) of McLean, Virginia, by the United States Department of Agriculture, (USDA), under request for quotes (RFQ) No. AG-3142-S-11-0001, for technical services.

We deny the protest.

BACKGROUND

The USDA issued the RFQ on September 3, 2010, under the Federal Supply Schedule for general purpose information technology professional services. The RFQ sought to create a blanket purchase agreement (BPA) for highly skilled technical services to support the USDA's Washington Communications and Telecommunications Services

(WCTS) Office. A-TEK is the incumbent prime contractor for WCTS support services, while TEG is the incumbent subcontractor responsible for all direct labor.

The RFQ included requirements for the BPA itself (*i.e.*, overall program management, framework for providing services, performance metrics and measures), as well as requirements for a fixed-price “base level call order” (BLCO), reflecting the base level of services required for the entirety of the BPA. The USDA anticipated that additional call orders would be issued for services beyond the BLCO requirement as fixed-price labor hour or time and material requirements, and based on the selected vendor’s GSA schedule rates.

The RFQ contemplated a best-value source selection considering technical factors and price, with technical factors being considered more important than price. The technical factors, which were listed in descending order of importance, were as follows: (1) technical approach, understanding of requirements, deliverables and delivery schedule; (2) management approach; (3) key personnel; (4) organizational experience and past performance; and (5) transition plan. RFQ, Amendment 2, at Bates 260.

According to the RFQ, the technical approach, management approach, and past performance factors would be evaluated both with respect to general BPA requirements and separately with respect to the BLCO requirements, whereas the key personnel factor was to be evaluated for the BLCO requirements only. The transition plan factor was to be separately evaluated pursuant to the transition requirements established by the RFQ. The RFQ indicated that the ultimate best-value decision would consider overall BPA and BLCO ratings equally, and would consider the transition plan rating as less important. Contracting Officer Statement of Facts at Bates 82; RFQ, Amendment 1, at Bates 247. Regarding the agency’s evaluation methodology, the RFQ established that the agency would rate offerors’ proposals using the following adjectival rating scheme: outstanding, superior, acceptable, marginal, and unacceptable.¹ RFQ at Bates 188. The RFQ also stated that agency socioeconomic objectives and quality of proposal preparation, while not evaluation factors, would be considered during the best value analysis.²

¹ Although the solicitation anticipated the award of a BPA under a vendor’s General Services Administration (GSA) FSS contract, the solicitation stated that it sought “proposals” and that term is used repeatedly throughout the solicitation and the procurement record. For the sake of consistency, we refer to the firms as “offerors” and their submissions as “proposals” throughout this decision.

² With regard to “quality of proposal preparation,” the RFQ stated that “offerors who include essential information to substantiate their quote will be rated higher, . . . proposals prepared in accordance with Government instructions will rate higher . . . [and] the amount of clarification required to rate the proposal will be taken into consideration.” RFQ at Bates 188-189. In this area we note that TEG’s proposal
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With regard to price, the RFQ required offerors to submit “GSA labor categories and rates for technical support services which may be issued during the term of the BPA,” and a pricing table including “the labor category and hourly rate for each of your proposed labor categories for each year for [the BLCO].” RFQ, Amendment 1, at Bates 246. The submitted rates were required to be identified separately for the BPA level-of-effort labor hours and for the fixed-price BLCO tasks. *Id.* at 247. For price evaluation purposes, the RFQ provided that the BLCO fixed-price amount would be the basis of the price analysis for award. *Id.* at 246.

The RFQ initially closed on October 12, 2010. After evaluation of the proposals received, TEG was rated as outstanding overall for the technical factors, while A-TEK received an overall rating of acceptable under the technical factors, and offered a lower price. The agency conducted a best-value trade off, which resulted in award to TEG; the highest-rated, highest-priced offeror. A-TEK and a third offeror protested the award to our Office, resulting in the USDA taking corrective action on December 17. As a part of the corrective action, the USDA agreed to reevaluate the proposals. Based on the agency’s proposed corrective action, we dismissed the protests as academic. *A-TEK, Inc., B-404581.2*, Dec. 20, 2010.

The agency conducted its initial reevaluation in January 2011. Based on this initial reevaluation, TEG again received an overall technical rating of outstanding, with a BLCO base-year price of \$5,495,600.84 and an overall BLCO price of \$25,779,529. Initial Price Evaluation at Bates 769. Similarly, A-TEK was again rated as acceptable overall technically, with a BLCO base-year price of \$3,937,120.80 and an overall BLCO price of \$20,366,425.36. *Id.* Following the initial evaluation the agency established a competitive range limited to TEG and A-TEK and engaged in two rounds of discussions; the third offeror was excluded.

During the first round of discussions, A-TEK received technical and price discussion items. As relevant here, with regard to price, the agency developed an independent government estimate (IGE) range of approximately \$5 million to \$6.5 million for the BLCO, based on its historical costs and contract management experience. In light of this IGE, the evaluators were concerned that A-TEK’s price might be so low that A-TEK would not provide an industry standard level of support. Accordingly, during the first round of discussions, the agency informed A-TEK that its price appeared too low, and requested that A-TEK address the agency’s concerns regarding BLCO performance.

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required no clarification to be rated outstanding, while A-TEK’s proposal required discussions in order to be rated superior.

TEG received no technical items during the first round of discussions, but did receive one price item. Based on the unexpectedly low prices submitted by A-TEK (and by the third offeror not admitted to the competitive range), the agency advised TEG that its price appeared to be high, and requested that TEG review its price proposal, submit “any changes if necessary,” and explain how it arrived at its price. TEG Discussion Letter, at Bates 771.

In response to the discussion items, A-TEK revised its technical proposal and provided additional information to substantiate its price. Based on these revisions the agency upgraded A-TEK’s overall technical rating from acceptable to superior, and determined that its price was sufficiently justified. TEG also revised aspects of its technical proposal, and substantially reduced its price to \$3,574,671.76 for the BLCO base year, and \$17,873,358.80 for the BLCO overall.

Considering the price responses from the first round of discussions the agency undertook a second round of discussions solely addressing price. During these discussions, A-TEK was informed that its response to the agency’s performance concerns was considered sufficient and was given an additional opportunity to revise its price. In response, A-TEK declined to further revise its price. In contrast, TEG was asked to address concerns that its new price might be too low to ensure retention of personnel, creating a performance risk. TEG then provided an explanation of its price and its ability to retain personnel. The agency concluded that TEG’s response was sufficient to allay its concerns.

In sum, the final evaluations and prices were as follows:

	A-TEK	TEG
Overall Rating	Superior	Outstanding
BPA Rating	Superior	Outstanding
BPA Technical	Superior	Outstanding
BPA Management	Acceptable	Superior
BPA Past Performance	Superior	Outstanding
BLCO Rating	Acceptable	Outstanding
BLCO Technical	Acceptable	Outstanding
BLCO Management	Acceptable	Superior
BLCO Key Personnel	Acceptable	Outstanding
BLCO Past Performance	Superior	Outstanding
Transition Plan Rating	Superior	Outstanding
BLCO Base Year Price	\$3,937,120.80	\$3,574,671.76
BLCO Overall Price	\$20,366,425.36	\$17,873,358.80

Consensus Report at Bates 977, 985.

Based on the relative ratings and prices, the contracting officer decided to award the BPA to TEG as the lowest-priced, highest-rated offeror. This protest followed.

ANALYSIS

A-TEK alleges that discussions were misleading and that the agency's technical evaluation was improper and unequal with regard to nearly every evaluation factor.³ We have reviewed the entire record and conclude that there is no basis on which to sustain A-TEK's protest. Here, we address the protester's primary allegations.⁴

DISCUSSIONS

Where, as here, a competition is conducted among FSS vendors pursuant to Federal Acquisition Regulation (FAR) part 8, there is no requirement for agencies to conduct discussions in accordance with FAR § 15.306. However, exchanges that do occur with vendors in FAR part 8 procurements, like all other aspects of such procurements, must be fair and equitable. USGC Inc., B-400184.2, et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3.

A-TEK alleges that the agency acted unequally during the first round of discussions by informing A-TEK that its price appeared too low in comparison to the IGE range, while alerting TEG that its price appeared high when TEG's price was within the IGE range and had been determined to contain realistic costs. We disagree, and find nothing improper concerning the first round of discussions.

³ A-TEK also alleges that the agency conducted an unequal price analysis and failed to properly investigate whether TEG's price was too low. The purpose of a price reasonableness evaluation is to ensure that a proposed price is not too high, not to ensure that it is not too low. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3. Consideration of whether a price is too low pertains to an analysis of price realism, for which the RFQ did not provide. To the extent that price realism-like issues may have been raised during discussions, the protester does not object to the agency's inquiries in this regard, and instead alleges that it was unreasonable for the agency to have found that TEG's low price was realistic. However, because the RFQ did not provide that the agency would conduct a price realism analysis, the allegation is denied.

⁴ The protester raised additional protest grounds not discussed in this decision. Our Office has reviewed all protest grounds and, to the extent that a protest ground is not discussed here, we consider it to be without merit.

For discussions to be meaningful they must lead an offeror to areas of the agency's concern. See Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7. Prior to the first round of discussions A-TEK's price was significantly below the IGE range established by the agency, raising a concern that A-TEK might not provide an industry standard level of service. Thus, the agency appropriately informed A-TEK of this concern during discussions. With regard to TEG, as a general matter, it is within an agency's discretion to inform an offeror during discussions that its price appears to be high in comparison to other offeror's proposed prices. DeTekion Security Systems, Inc., B-298235, B-298235.2, July 31, 2006, 2006 CPD ¶ 130 at 13. TEG's price, while near the bottom of the established IGE range, was significantly higher than the prices proposed by the other offerors, thus it was within agency's reasonable exercise of its discretion to raise this issue with TEG.

A-TEK also states that it understood the agency's first round of discussions to indicate that any lower offered price would be unacceptable, and that by misleading it to believe that its price was too low, the agency rendered the second round of discussions meaningless. A-TEK was not misled; where the agency had an actual concern regarding A-TEK's price, it was obligated to raise that issue in discussions. Moreover, A-TEK ignores the fact that the agency informed it during the second round of discussions that its response to the agency's concerns was sufficient, and its price considered acceptable, prior to allowing A-TEK the opportunity to again revise its price. A-TEK's misapprehension of the plain statements by the agency in this regard did not render the agency's actions misleading.

TECHNICAL EVALUATION

A-TEK asserts that it should have received higher ratings under all the evaluation factors given the presence of multiple strengths and the absence of weaknesses in its technical evaluation. The RFQ's definitions of a superior or outstanding proposal clearly required more than the mere absence of weaknesses, or presence of a specific number of strengths. Rather, the evaluation ratings considered the extent to which the proposal was perceived to exceed the government's requirements; to present high quality well-justified capabilities; and to present advantages in fulfilling the agency's requirements.⁵ Specifically, the RFQ stated that an outstanding proposal:

[G]reatly exceeds the Government's minimum requirements. The proposal meets the fullest expectations of the Government by being very comprehensive, in-depth, clear, accurate, innovative,

⁵ We note that a "strength" in this evaluation did not necessarily exceed requirements or constitute an "advantage." According to the RFQ evaluation scheme, "[Strengths] [r]epresent a sound business solution. Meets high levels of expectation that the Offeror's proposed solution has no risk associated with it." RFQ at Bates 189.

believable, and of the highest quality. Offeror's proposed capability and proposed effort is of the highest quality and thoroughly justified or substantiated. Internal consistency and no incompatibility with other portions of the proposed efforts. Proposal has significant advantage(s) in meeting the BPA Call Order requirement(s), which is not offset by disadvantage(s).

Id. In comparison, a superior proposal:

[I]s good; exceeds the Government's minimum requirements with one or more strengths and no weaknesses. Offeror's proposed capability or proposed effort is high quality and is well justified or substantiated. No or very minor inconsistencies or incompatibilities with other portions of the proposed efforts. Proposal has an advantage(s) in meeting the requirements of the BPA Call Order, which is not offset by disadvantage(s) or has only minor disadvantage(s).

Id. While an acceptable proposal:

[I]s acceptable; meets the government's minimum requirements with no significant weaknesses. Offeror's proposed capability or proposed effort is an acceptable level of quality and justified or substantiated. No significant inconsistencies or incompatibilities with other portions of the proposed effort. Proposal has neither an advantage(s) nor disadvantage(s).

Id.

Against these standards, A-TEK's argument that it deserved outstanding ratings, as opposed to the superior and acceptable ratings it received, based on the agency's mere identification of strengths and the absence of weaknesses in its proposal, represents mere disagreement with the agency's judgments that does not render the evaluation unreasonable. There is no legal requirement that an agency must award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. See, e.g., Archer Western Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5; Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 at 4.

A-TEK also argues that the technical approach, management approach, and key personnel evaluation factors were unequally applied; resulting in TEG receiving higher ratings based on nearly identical aspects of the proposals, or nearly identical evaluated strengths. A-TEK's allegations do not, however, hold up under review of the record.

For example, under the technical approach factor, A-TEK alleges that TEG was credited with a strength for its incumbent personnel's experience with day-to-day operations, while A-TEK did not receive a similar strength despite its incumbent status. Notwithstanding the fact that our review of the record reveals no such strength in TEG's evaluation, see Consensus Report at Bates 987-990, contrary to the protester's assertions, the record demonstrates that A-TEK did receive a strength under the BPA technical approach factor for "nine years experience as prime with WCTS." Id. at 979.

Similarly, A-TEK alleges that TEG received a strength for providing early responses to VIP customers, while A-TEK did not receive a strength despite A-TEK's proposal of [DELETED]. In fact, TEG received a strength for specifically proposing to expedite executive service support by [DELETED]. Id. at 989. Thus, our review demonstrates that A-TEK's alleged disparate treatment argument under the technical approach factor has no basis in the record. Moreover, on the whole, A-TEK's over-generalization of a small number of TEG's strengths in an effort to find an unequal application of the evaluation criteria is not convincing where, in the technical approach area alone, TEG's proposal received a total of 25 strengths, as compared to A-TEK's 6 strengths.⁶

Nor do A-TEK's allegations survive comparison to the record under the key personnel evaluation factor. Under this factor, A-TEK complains that the agency assigned TEG ten strengths related to its proposal of incumbent personnel, while failing to give A-TEK any credit, despite A-TEK's proposal to [DELETED].⁷ However, in its proposal A-TEK [DELETED]. As A-TEK acknowledges, TEG possessed exclusive commitment letters from the incumbent personnel, allowing

⁶ With regard to the management approach evaluation factor, A-TEK stated that it "incorporates the argument set forth [regarding the technical approach factor]." See A-TEK Comments at 17, 24. Based on our review, it is not apparent why A-TEK's arguments with respect to the technical approach factor, which it seeks to incorporate, also apply to the separately stated and evaluated management approach factor.

⁷ A-TEK also asserts that the agency introduced an unstated evaluation criteria by assigning strengths to TEG's proposal based on its offer of additional "key personnel," beyond those required by the RFQ. In its proposal, TEG stated that it possessed commitment letters from all key and non-essential personnel performing its incumbent effort, and stated it was prepared to commit certain additional critical employees to the contract. Given that the RFQ merely required resumes of proposed key personnel, there is no basis to object to the agency's assignment of strengths for TEG's commitment of key personnel and other critical personnel where the agency found the additional commitment of specific personnel to constitute a benefit.

TEG the exclusive right to submit their resumes for evaluation.⁸ See TEG Proposal at Bates 519. Given this record, we have no basis to conclude that the agency's evaluation in this regard was unequal.

Finally, with regard to the past performance factor, A-TEK alleges, in part, that the agency erred in assigning TEG an outstanding rating since one of the past performance references on which the agency relied, was in fact two separate contracts that, even together, were smaller in dollar value, scope, and complexity than the WCTS contract. In this regard, the RFQ required each offeror to supply three past performance references relating to similar contracts performed during the previous three years. The RFQ stated that similar was "meant to convey similarity in subject matter, dollar value, duration, and complexity." RFQ, Amendment 2, at Bates 258.

After a preliminary review of the record, our Office requested supplementary information from the agency regarding its selection of the past performance references contacted, and its determinations concerning the references' relevance. The agency responded that the technical evaluation team considered all of the past performance contract references submitted by each offeror, and contacted the reference for the contract that most closely resembled the work required by the RFQ. However, the agency also acknowledged that in making its selections, the evaluation team misunderstood the contract values listed in the offerors' proposals. Specifically, the evaluation team believed that the stated values represented yearly amounts when, in fact, the stated values represented the total terms of the referenced multi-year contracts. Thus, the true comparative values of the references selected were several times less than the evaluators believed, and much less than the value of the RFQ. We have reviewed the reference contracts, and conclude that the

⁸ Nonetheless, A-TEK argues that our Office has previously held that source selection officials should consider an offeror's proposal to use incumbent personnel even if they are proposed without commitment letters, citing George G. Sharp, Inc., B-401077, B-401077.2, Apr. 15, 2009, 2009 CPD ¶ 87 at 3 (citing Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 6). This case in fact supports the agency's evaluation. In George G. Sharp, Inc., our Office held that an agency's evaluation was reasonable where it assessed a strength primarily based on the awardee's proposed candidate for the project manager position, as opposed to the awardee's offer to retain the incumbent project manager. In this regard, our Office expressly stated that the evaluation was proper because it was "clear that the incumbent [project manager] alternative was given no weight in the source selection; the 'award' recommendation document relied only on the strength associated with the proposed [project manager]." Here, consistent with George G. Sharp, Inc., the agency reasonably evaluated the key personnel actually proposed by A-TEK, with resumes, under the key personnel factor, rather than its more general offer to hire the incumbent key personnel.

agency erred in basing its past performance ratings in part on contract references that were not similar to the WCTS contract, as required by the RFQ.

Although we conclude that the agency erred in its evaluation under the past performance evaluation factor, we cannot conclude that competitive prejudice resulted from this error. First, the record establishes that the past performance evaluation was based in part on the agency's positive experience during the incumbent effort.⁹ Moreover, the final technical evaluation consensus report reflected an advantage for TEG under every single evaluation factor, as noted above. In this context, even if A-TEK had been assigned an outstanding rating under past performance, and TEG a lesser rating, TEG would maintain an overwhelming technical advantage, and remain lowest priced. Further, the record demonstrates that TEG's technical advantage was greatest under the most important evaluation factor, technical approach, under which TEG enjoyed an advantage of 25 strengths to A-TEK's 6. Accordingly, we fail to see how the agency's error under the past performance evaluation factor could have reasonably caused competitive prejudice. Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3.

The protest is denied.

Lynn H. Gibson
General Counsel

⁹ In this connection, the contracting officer's technical representative for the incumbent contract was a member of the technical evaluation team and his personal knowledge of incumbent contract performance was considered in assigning the past performance ratings. The record reflects that both A-TEK and TEG were assigned a strength under the past performance factor related to incumbent performance. Consensus Report at Bates 982, 992.