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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Peridot Solutions, LLC

File: B-408638

Date: November 6, 2013

Ranapratap Chegu, Peridot Solutions, LLC, for the protester.
Devon E. Hewitt, Esq., Protorae Law PLLC, for Global Tech, Inc. d/b/a
eGlobalTech, the intervenor.

Todd E. Davis, Esq., and Brian M. Stanford, Esq., Department of Education, for
the agency.

Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency conducted unequal discussions with protester and awardee regarding pricing is denied where record shows that agency found protester's initial pricing to be reasonable but found awardee's initial pricing to be unreasonably high.

DECISION

Peridot Solutions, LLC, of Tysons Corner, Virginia, protests the award of a contract to Global Tech, Inc. d/b/a eGlobalTech, of Arlington, Virginia, under request for proposals (RFP) No. ED-CIO-13-Q-0004 issued by the Department of Education for services in support of the agency's Information Technology Investment Management and Enterprise Architecture programs. Peridot asserts that the agency conducted discussions unequally with regard to pricing.

We deny the protest.

BACKGROUND

The solicitation, which the agency issued on March 5, 2013, contemplated the award of a fixed-price contract with a base period of 8 months and four 1-year option periods. RFP at 1, 3-4, 40. Award was to be made to the offeror whose proposal was determined to represent the best value to the government, considering price, five technical factors, and past performance. *Id.* at 40-42. The solicitation advised that the technical factors were of equal importance to the past

performance factor, and that the technical and past performance factors, when combined, would be more important than price. RFP at 40.

The agency received a number of proposals in response to the solicitation, including proposals from Peridot and eGlobalTech. Agency Report (AR), Tab 11, Source Selection Decision Memorandum (SSDM), at 4. The agency evaluated the proposals and established a competitive range. Id. at 9-21. The agency then engaged in discussions with the competitive range offerors via e-mails in which the contracting officer asked the firms to address issues regarding significant weaknesses that were identified within their proposals. See, e.g., AR, Tab 12, Peridot Discussions E-Mail (June 4, 2013), at 1; AR, Tab 13, eGlobalTech Discussions E-Mail (June 4, 2013), at 1; AR, Tab 11, SSDM, at 21-22.

In general, Peridot's discussions e-mail posed questions regarding personnel qualifications and labor mix. AR, Tab 12, Peridot Discussions E-Mail (June 4, 2013), at 1. One of the questions asked the firm to "elaborate on your proposed workforce/skillset mixture, as it correlates to your total contract pricing." Id. Other than this, Peridot's discussions e-mail did not reference pricing. Id. eGlobalTech's discussions e-mail, on the other hand, informed the firm that its pricing was deemed too high and asked whether the firm was "able to propose additional discounts."¹ AR, Tab 13, eGlobalTech Discussions E-Mail (June 4, 2013), at 1. Peridot's discussions e-mail requested that the firm provide a "response" by 12:00 p.m. June 6, whereas eGlobalTech's discussions e-mail requested that the firm provide "any proposal revisions" by 12:00 p.m. June 6. AR, Tab 12, Peridot Discussions E-Mail (June 4, 2013), at 1; AR, Tab 13, eGlobalTech Discussions E-Mail (June 4, 2013), at 1.

Both Peridot and eGlobalTech submitted responses to the discussions e-mails. eGlobalTech's response included significant downward adjustment to the firm's proposed pricing. See AR, Tab 11, SSDM, at 18, 23. Peridot's response included additional information regarding its personnel and a two-page table showing pricing identical to the firm's initial proposed pricing. AR, Tab 7, Peridot Response to Discussions E-Mail, at 1-2; see also AR, Tab 6, Peridot Initial Proposal, at 4-5.

After evaluating the responses, the agency upwardly revised Peridot's technical proposal rating from the second-highest available rating to the highest available rating, and downwardly revised eGlobalTech's total evaluated price. AR, Tab 11, SSDM, at 19, 23. Peridot's and eGlobalTech's final overall technical and past

¹ In its evaluation of initial proposals, the agency also deemed the pricing of several other competitive range offerors too high and posed discussions questions to those offerors regarding pricing. See AR, Tab 11, SSDM, at 21-22.

performance ratings, together with their final evaluated prices, are shown in the table below.²

	Peridot	eGlobalTech
Technical Proposal	Excellent	Excellent
Past Performance	Good	Outstanding
Total Evaluated Price	\$6,686,195	\$6,726,282

AR, Tab 11, SSDM, at 23. Among all of the competitive range offerors, Peridot's and eGlobalTech's total evaluated prices were the lowest and second-lowest total evaluated prices, respectively.³ Id. at 23-24.

Upon reviewing the evaluation findings, the contracting officer, who also served as the source selection authority, noted that eGlobalTech's total evaluated price was less than one percent higher than Peridot's total evaluated price. Id. at 24. The contracting officer also noted that although both firms' technical proposals received the highest available rating, eGlobalTech received a higher past performance rating than Peridot. Id. After recognizing that the solicitation provided that an offeror's technical and past performance ratings, when combined, would be more important than price, the contracting officer determined that eGlobalTech's proposal represented the best value to the government. Id. The agency made award to eGlobalTech on July 15. Contracting Officer's Statement at 10. After receiving a debriefing, Peridot filed a protest with our Office.

DISCUSSION

Peridot asserts that the agency conducted discussions in an unequal manner. More specifically, Peridot maintains that "while Peridot was asked to clarify and reconfirm our submission . . . , eGlobaltech was asked to address their pricing and may even have been encouraged to lower their pricing." Comments at 1; see also Protest at 1. Peridot claims that had it been offered the "same consideration," the firm would have submitted a "revised offer [that] would provide the American taxpayers

² The solicitation included definitions for the technical proposal and past performance ratings. RFP at 42-44. For the technical proposal, excellent was the highest available rating. Id. at 42. For past performance, blue/outstanding was the highest available rating, and green/good was the second-highest available rating. Id. at 43-44.

³ Although the solicitation specified an 8-month base period, offerors' pricing was evaluated using a base period of six months. See RFP at 3, 9; AR, Tab 11, SSDM, at 3, 19-20.

with the best overall solution as the lowest price.” Protest, attach. 1, Peridot Ltr. to Contracting Officer (Aug. 1, 2013), at 2.

The Federal Acquisition Regulation (FAR) requires agencies to conduct discussions with offerors in the competitive range concerning, “[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). Although discussions may not be conducted in a manner that favors one offeror over another, and offerors must be given an equal opportunity to revise their proposals, discussions need not be identical among offerors; rather, discussions need only be tailored to each offeror’s proposal. See FAR § 15.306(d)(1), (e)(1); WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6. Unless an offeror’s proposed price is so high as to be unreasonable or unacceptable, an agency is not required to inform an offeror during discussions that its proposed price is high in comparison to a competitor’s proposed price, even where price is the determinative factor for award. DeTekion Sec. Sys., Inc., B-298235, B-298235.2, July 13, 2006, 2006 CPD ¶ 130 at 15; IAP World Servs., Inc., B-297084, Nov. 1, 2005, 2005 CPD ¶ 199 at 4.

Here, Peridot’s initial proposal offered the lowest evaluated pricing of any offeror in the competitive range, and there is nothing in the record to suggest that the agency viewed Peridot’s pricing as unreasonable or unacceptably high. Consequently, the agency had no obligation to raise the issue of pricing with Peridot. Additionally, the record shows that the agency considered pricing which was initially proposed by several other offerors--and which was markedly higher than Peridot’s pricing--to be unreasonable and unacceptably high. See AR, Tab 11, SSDM, at 19-22. The agency appropriately raised the issue of pricing with these offerors.

On this record, the fact that eGlobalTech--one of the offerors whose pricing was considered to be too high--lowered its pricing in a manner that was a determinative factor in the source selection decision provides no basis for us to conclude that the agency conducted discussions unequally. Peridot could have, but did not, revise its pricing in response to its discussions e-mail (just as Peridot revised aspects of its

technical proposal). As noted above, Peridot instead expressly confirmed its initially proposed pricing. AR, Tab 7, Peridot Response to Discussions, at 1-2.

The protest is denied.⁴

Susan A. Poling
General Counsel

⁴ Peridot also raises the following argument: “If eGlobaltech reduced their price and by inference reduced the number of proposed resources to carry out the work, . . . how is it possible that their offer still remained rated ‘excellent’?” Comments at 2; see also Protest, attach. 1, Peridot Ltr. to Contracting Officer (Aug. 1, 2013), at 1. The nature of Peridot’s complaint is not clear because the firm does not reference a solicitation provision or a procurement statute or regulation that the agency allegedly violated. We note, however, that the solicitation did not call for a price realism analysis, but that under evaluation factor 2, it did call for consideration of an offeror’s approach to timely achieving task requirements. RFP at 40-41. For this evaluation factor, the agency documented its finding that eGlobalTech’s staff sizing was “appropriate.” AR, Tab 10, Consensus Technical Evaluation Report, at 4. Thus, even assuming that Peridot’s argument has a factual predicate and is cognizable, based on the record, we see no merit in it.