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Decision

Matter of: Paragon Systems, Inc.; SecTek, Inc.

File: B-409066.2; B-409066.3

Date: June 4, 2014

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Christopher McHale, Esq., for MVM, Inc., the intervenor.

Dorothy Guy, Esq., and Lucinda E. Davis, Esq., Social Security Administration, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests that agency misevaluated proposals and made an unreasonable source selection decision are denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation; protest that agency improperly failed to perform price realism analysis is denied where the record shows that the protester was not prejudiced by any such error.

DECISION

Paragon Systems, Inc., of Herndon, Virginia, and SecTek, Inc., of Reston, Virginia, protest the award of a contract to MVM, Inc., of Ashburn, Virginia, by the Social Security Administration (SSA) under request for proposals (RFP)

No. SSA-RFP-13-0008 for security guard services at the SSA Headquarters in Woodlawn, Maryland. Paragon and SecTek both argue that the agency misevaluated the proposals and made an unreasonable source selection decision.

We deny the protests.

BACKGROUND

The RFP, issued on April 5, 2013, as a commercial item solicitation, sought proposals to provide guard services and control center operations services for SSA headquarters buildings. Award was to be made to the offeror whose proposal

provided the best value considering price and non-price factors. RFP amend. 5, exh. A, Addendum, at 113-15 (addendum to Federal Acquisition Regulation (FAR) § 52.212-2).

The RFP specified services under a combination of fixed-price contract line items for the basic requirement, and indefinite-delivery/indefinite-quantity contract line items for issuance of either time-and-materials or labor-hour task orders for services beyond the basic requirement. Id. at 135-36. Performance was to begin with a 6-month transition, followed by a 6-month base period, four 1-year option periods, and a final “option to extend services” 6-month period. RFP amend. 5 at 7-8, 12.

The non-price evaluation of proposals was to be based on three factors, listed in descending order of importance: management approach, experience, and past performance.¹ RFP amend. 5, attach. A, Addendum, at 113-15. When combined, the non-price factors were approximately equal in importance to price. Id. Each offeror was required to submit a proposal identifying relevant experience in “no more than three contracts,” providing past performance questionnaires and contacts, and describing the firm’s management approach in a narrative that addresses quality control, transition, and staffing. The RFP also requested detailed pricing information; as discussed below, the solicitation stated that the agency “may perform a price realism analysis.” Id. at 106-10, 115.

The agency received initial proposals from 12 firms, including Paragon, SecTek, and MVM, by the June 3, 2013, closing date. The agency made award to SecTek on September 30. Paragon, the incumbent contractor, filed a protest in our Office challenging the award. After the protest was filed, the agency advised our Office that it had decided to take corrective action by reevaluating proposals and making a new contract award determination. Our Office dismissed Paragon’s protest as academic.

The agency established a competitive range of five offerors, conducted discussions, and issued amendments that made material changes. In late January 2014, the agency received and evaluated final proposal revisions (FPR). In its final evaluation

¹ Under both the management approach and experience factors, the agency was to assign adjectival ratings of excellent, good, acceptable, marginal, or satisfactory. AR, Tab 13A, Final Technical Evaluation Panel (TEP) Report, at 2. The evaluation of past performance is not at issue here.

report, the TEP described the technical features of the proposals and ranked them from a non-price standpoint as reflected in the following table:²

	Management Approach	Experience	Past Performance	Evaluated Price (millions)
Offeror A	Excellent	Excellent	Exceptional	\$128.4
MVM	Excellent	Excellent	Very Good	\$118.7
SecTek	Excellent	Good	Very Good	\$119.8
Paragon	Good	Excellent	Very Good	\$121.9

AR, Tab 14, Best Value Trade-Off Analysis and Award Recommendation, at 7.

The contracting officer, acting as the source selection authority, determined that a price realism analysis was not necessary. Instead, he compared the offerors' total prices and concluded that all prices were reasonable. Id. After reviewing all of the evaluation results, he found that MVM's proposal, the second highest-rated proposal with the lowest price, offered the best value to the government. Id. In his trade-off analysis, the contracting officer compared the merits of MVM's proposal with those of the other proposals in the competitive range.

In comparing MVM with SecTek, the contracting officer explained that both firms had excellent overall management approaches, but MVM's experience was more similar in size, scope, and complexity to the agency's requirements. In this regard, he stated that all three of SecTek's references included fewer guard posts (34, 44, and 53) than the agency's requirement (116), whereas MVM's references included guard posts that totaled 84, 111, and 160, numbers closer to the agency's requirement. Id. at 8. He found that, where MVM had demonstrated experience that was more similar in size, scope, and complexity to the agency's requirements--and where it also proposed a lower price--MVM represented the better value. Id.

In comparing MVM with Paragon, the contracting officer noted the superiority of MVM's management approach. He explained that, while the TEP found that Paragon proposed a good plan, it identified two weaknesses. One weakness concerned an aspect of the firm's quality control plan, and another concerned the firm's proposal to provide staffing relief in the event of emergencies. Id. at 9. The contracting officer also stated that Paragon's past performance was favorable, but its performance as the incumbent contractor had steadily declined recently. Id. He concluded that MVM offered a better value than Paragon; for a lower price, the government would get an experienced contractor with a very good past performance record who offers an excellent plan for managing the contract. Id.

² The fifth-ranked offeror's proposal is not relevant to our discussion, nor is the trade-off analysis as between MVM's proposal and that of the first-ranked offeror.

The agency awarded the contract to MVM on February 12; these protests followed. Both firms primarily argue that the agency miscalculated proposals. SecTek also argues that the agency's best value trade-off decision was unreasonable, and Paragon also argues that the agency improperly failed to conduct a price realism analysis. For the reasons discussed below, we deny the protests.

SECTEK PROTEST

SecTek argues both that its own proposal should have received the highest rating, excellent, under the experience factor, and that MVM's proposal should have been rated lower than excellent.

Our Office examines an agency's evaluation of experience to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. An agency has broad discretion, when evaluating offerors' experience, to determine the degree to which a particular contract is relevant to an evaluation of experience. Accordingly, a protester's disagreement with the agency's evaluation judgments about experience ratings does not establish that the evaluation or the source selection decision was unreasonable. See A&D Gen. Contracting, Inc., B-409429, Apr. 17, 2014, 2014 CPD ¶ 130 at 2.

The experience factor evaluation was to assess whether the offeror had proven experience to reduce contract performance risk and ensure performance success, and would consider three aspects of the offeror's experience: size, scope, and complexity. RFP amend. 5, attach. A, Addendum, at 113-14. For size, the evaluation was to compare the statement of work to the offeror's experience on five elements: number of guards, number of guard posts, number of hours, square footage and setting of buildings, and total contract value. Id. For scope, the evaluation was to compare the similarity of the work requirements in the scope of work to the offeror's experience. Id. at 114. Finally, for complexity, the evaluation was to compare the number and combination of tasks/activities involving similar degrees of difficulty between the statement of work and the offeror's experience. Id.

The agency found that SecTek's revised proposal provided information that resolved certain concerns about its experience. In light of all of the aspects of experience to be considered in comparing the size, scope, and complexity of SecTek's references with the government's requirement, the TEP rated the firm's proposal as good, or "very similar." No weaknesses were identified. AR, Tab 13A, Final TEP Report, at 9-10; Tab 5, Interim TEP Report for SecTek, at 2-3. As discussed above, in the best value trade-off analysis, the contracting officer identified as a discriminator the fact that SecTek's references involved fewer guard posts than the RFP requirement. AR, Tab 15, Best Value Trade-Off and Award Recommendation, at 8.

SecTek argues that the only flaw identified with its experience was that each of its references required fewer guard posts than the RFP required. The protester contends that if this weakness³ had been raised with the firm during discussions, it could have improved its proposal and eliminated the matter as a discriminator in the agency's trade-off decision.

When conducting discussions, an agency is not required to raise with each offeror every discriminator for award. See, e.g., PWC Logistics Servs., Inc., B-299820, B-299820.3, Aug. 14, 2007, 2007 CPD ¶ 162 at 6. Rather, discussions need only be meaningful, that is, discussions must identify deficiencies, significant weaknesses, and adverse past performance to which the offeror has not yet had an opportunity to respond. FAR § 15.306(d)(3); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. The agency's evaluation conclusion regarding the number of guard posts reflected in SecTek's experience did not rise to this level, and SecTek's argument does not provide a basis to sustain the protest. See JAM Corp., B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 6-7.

Turning to MVM's revised proposal, in light of all of the aspects of experience to be considered in comparing the size, scope, and complexity of MVM's experience with the government's requirement, the TEP rated the firm's proposal as excellent or "equivalent." AR, Tab 13A, Final TEP Report at 8; Tab 3, Interim TEP Report for MVM, at 3-4. In terms of size, for example, the agency found that one of MVM's references exceeded the RFP requirement with respect to number of occupants, labor hours, and dollar value, and the number of posts (111) was very similar to the RFP requirement (116), while another reference exceeded the RFP's requirements with respect to the number of posts and labor hours, but the dollar value was somewhat similar. The agency also found that MVM's references were equivalent to the agency's requirement in terms of complexity. AR, Tab 3, Interim TEP Report for MVM at 3-4.

SecTek argues that it was unreasonable to rate MVM's proposal excellent, which was defined as "equivalent" in size, scope, and complexity to the RFP requirement. The protester contends that the evaluators found that one of MVM's references was deemed "somewhat similar" to the RFP requirement, while a second had aspects that were only "slightly similar" to the RFP, and that this means the experience was not "equivalent."

³ This issue is not identified as a weakness in the evaluation record. Even if, as SecTek argues, the agency referred to the issue as a weakness at the debriefing, the evaluation record, not the agency's alleged statements during a debriefing, provide the basis for our review. Keystone Sealift Servs. Inc., B-401526.3, Apr. 13, 2010, 2010 CPD ¶ 95 at 5.

A procuring agency's technical evaluators have considerable latitude in assigning ratings which reflect their subjective judgments of a proposal's relative merits. See, e.g., I.S. Grupe, Inc., B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5. Here, the agency's evaluation of proposals under the experience factor required consideration of multiple aspects of performance for each reference. While certain aspects of MVM's experience were considered "somewhat similar" or "slightly similar" to the RFP's requirements, others were considered "very similar" or "equivalent," with various notations that the firm's experience "exceeded" the RFP's requirements.⁴ AR, Tab 3, Interim TEP Report for MVM at 3-4. The record supports the determination that MVM's experience was excellent because of its similarity to the RFP requirement, even though some aspects of its experience were less similar. More important, SecTek's focus on the adjectival definitions is misplaced. Adjectival ratings are merely guides for intelligent decision making in the procurement process. Burchick Constr. Co., B-400342.3, Apr. 20, 2009, 2009 CPD ¶ 102 at 4-5. Even if both proposals had received the same adjectival ratings, the agency identified clear differences in their experience and there is no basis to question the evaluated superiority of MVM's proposal.⁵

Finally, since none of SecTek's challenges to the evaluation of its and MVM's proposals have merit, we have no basis to question the agency's selection of MVM's higher-rated, lower-priced proposal over SecTek's proposal.

PARAGON PROTEST

Paragon's challenge to the evaluation of its proposal under the management approach factor centers on its two assigned weaknesses.⁶ The firm alleges that the weaknesses are not justified, and that the agency treated the offerors unequally.

⁴ Unlike with MVM's experience, certain aspects of SecTek's experience were considered "not similar." AR, Tab 6, Interim TEP Report for SecTek, at 2-3.

⁵ SecTek also argues that, in evaluating MVM's past performance, the agency improperly failed to consider an inspector general report from another agency that contained negative information about MVM. In certain limited circumstances, an agency evaluating an offeror's past performance has an obligation to consider outside information bearing on an offeror's past performance. TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 33. In order to succeed on this claim, the protester must show that the agency was aware (or should have been aware) of the information, and that the agency acted unreasonably in failing to consider it. Id. SecTek has made no such showing.

⁶ In its initial protest, Paragon argued that the agency unfairly failed to note additional strengths in its proposal, and appeared to challenge its past performance
(continued...)

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor will we substitute our judgment for that of the agency; the evaluation of proposals is a matter within the agency's discretion. Halfaker & Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 5. The relevant question for our Office, in reviewing this subjective judgment, is whether the evaluation judgment was reasonable and consistent with the solicitation. ASRC Research & Tech. Solutions, LLC, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 8. Our review of the record provides our Office with no basis to question the evaluation.

Under the management approach factor, the agency was to consider whether a proposal demonstrated a "reasonable, logical, and technically sound plan" for managing the proposed contract in such areas as quality control and staffing. RFP amend. 5, attach. A, Addendum, at 113. As part of quality control, offerors were instructed to address their methods of inspection and to delineate specifically what was to be inspected. Id. at 110. Likewise, the RFP instructed offerors to provide a "detailed plan indicating your approach to providing relief to staff." Id. at 111.

In evaluating Paragon's initial proposal, the TEP identified a weakness in the firm's quality control plan because it called for its quality control monitor to inquire about officer [DELETED] issues while conducting post inspections. The TEP found that discussing [DELETED] issues with a quality control monitor would distract officers from their critical security functions. AR, Tab 13A, Final TEP Report, at 11. The agency identified this concern with Paragon during discussions.

Paragon's revised proposal stated that it would pay particular attention to verify that individual officer inspections were not disruptive, but did not otherwise revise its plan in light of the TEP's concern. AR, Tab 11C, Paragon FPR at 1. In the final evaluation, the TEP again concluded that Paragon's approach to conducting post inspections should be considered a weakness in the proposal. AR, Tab 13A, Final TEP Report at 11.

Paragon argues that the agency should not have viewed its proposal to interview guards about [DELETED] issues at their posts as a weakness because agency officials have made such inquiries in the past. However, the evaluators were charged with considering the merits of Paragon's quality control plan, not the conduct of agency officials. Thus, in the judgment of the evaluators, Paragon's

(...continued)

evaluation. Protest at 21-22. The agency responded to these matters in its agency report, AR, Legal Memorandum, at 23-24, and Paragon did not address the agency's arguments in its comments. As a result, we conclude that Paragon has abandoned these protest grounds and will not consider them further. Intellidyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

proposal to query guards about [DELETED] issues at their posts merited a weakness. Paragon has not addressed the agency's substantive concern about the disruptive potential of these inquiries, but only asserts that the inquiries by agency officials are also disruptive. This does not provide a basis for us to find the agency's evaluation unreasonable.

Paragon also argues that the evaluation was unequal because SecTek's proposal similarly stated that its quality control inspectors would question security officers about [DELETED], yet SecTek's proposal was not downgraded for this feature. The record shows, however, that SecTek's proposal only stated that it would "inspect" [DELETED], not query officers about [DELETED]. AR, Tab 12B, SecTek FPR, at 4. Paragon's contention that SecTek must also have intended to question the guards about [DELETED] is not supported by the record.⁷

Turning to the second weakness, the TEP observed that Paragon's initial proposal stated that, in emergency situations, a supervisor might stand post and provide emergency relief. Since the RFP did not permit supervisors to provide relief while simultaneously performing supervisory functions, the agency asked Paragon for clarification. AR, Tab 13A, Final TEP Report at 11. Paragon's revised proposal stated that, in rare instances where a relief officer was unavailable, a supervisor would [DELETED] and perform the duties required of a relief officer. AR, Tab 11C, Paragon FPR at 6-7. This appears to have resolved the TEP's initial concern. However, the TEP found the response to raise a new weakness since different types of posts have different requirements, such as uniforms, access levels, and personal identification numbers. AR, Tab 13A, Final TEP Report at 12.

Paragon argues that its staffing approach provided for a significant staff of relief officers, so that the need for a supervisor to take over in an emergency should be an extremely rare event--one that should not be considered a weakness. Protest at 20-21. Rare or not, however, Paragon does not address the agency's concern that a supervisor taking over in an emergency relief situation might be unfamiliar with the requirements of the post at issue. Under the circumstances, we cannot find this concern unreasonable.

Paragon argues that this weakness represents unequal evaluation treatment because neither SecTek nor MVM provided any approach to handling sudden emergencies when a relief guard was not immediately available. Paragon Comments at 2. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences

⁷ Paragon's argument that MVM planned to use an inspection checklist which Paragon suggests would include [DELETED], and similarly "distracting" topics, Comments at 2, is also not supported by the record.

between the offerors' proposals. See Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. Paragon has not made this showing. The other offerors did not offer comparable details and, thus, the agency had no basis to find comparable weaknesses in their proposals.

Paragon finally argues that the agency improperly failed to conduct the price realism analysis of proposals the firm believes the solicitation required. Paragon maintains that MVM's pricing reflected understaffing of supervisory positions, a failure to account for training costs, and a failure to include the cost of the quality control inspector that provided the basis for its exceptional strength under the management approach factor. Paragon Comments at 4-5. Paragon argues that a reasonable price realism analysis would have caused the agency to question MVM's understanding of the requirement. Id.

As noted above, SecTek's proposal was rated technically superior to Paragon's, and offered a lower evaluated price (but slightly higher than MVM's price). The agency ranked the proposals placing SecTek in line for award ahead of Paragon. Although Paragon generally argues that a price realism analysis also would have affected the evaluation of SecTek, Paragon fails to provide any specific factual basis to support that argument. Paragon Comments at 4-5. Since SecTek is in line for award ahead of Paragon, and Paragon has not meaningfully challenged the evaluation of SecTek, we conclude that, even if the agency improperly failed to conduct a price realism analysis,⁸ Paragon was not prejudiced.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. In short, even if a price realism analysis might have resulted in assessing a risk against MVM's proposal--or even rejecting the proposal--Paragon has not shown a reasonable likelihood that it would have been awarded the contract, rather than SecTek, whose proposal was higher-rated and

⁸ The RFP states that the agency "may" perform a price realism analysis. RFP amend. 5, attach. A, Addendum, at 115. However, it also states that "unrealistically low offers, indicative of a potential buy-in or a significant misunderstanding of the requirements of the work statement, will be considered in determining" risk, and an offer could be rated "unacceptable" if its prices were unreasonable. Id. We have found that similar language obligates an agency to evaluate price realism. Logistics 2020, Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7-8.

lower-priced than Paragon's proposal. Accordingly, we will not sustain the protest on this basis.⁹

The protests are denied.

Susan A. Poling
General Counsel

⁹ SecTek did not challenge any aspect of the price evaluation. To the extent that its comments in response to the agency's second supplemental filing can be construed as such a protest, it is untimely filed. 4 C.F.R. § 21.2(a)(2) (2014) (protests of other than alleged solicitation improprieties shall be filed not later than 10 days after the basis of protest is known or should have been known).