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

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Decision

Matter of: Sumaria Systems, Inc.

File: B-299517; B-299517.2

Date: June 8, 2007

David M. Pronchick, Esq., BlueLaw LLP, and Rebecca E. Pearson, Esq., John J. Pavlick, Jr., Esq., and Sharon A. Jenks, Esq., Venable LLP, for the protester. Richard W. Gates, Esq., and Lary Mohl, Esq., United States Transportation Command, Department of Defense, for the agency. Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency reasonably evaluated successful vendor's quotation in competition for order under Federal Supply Schedule for information technology services, and where additional past performance information considered by agency supported improvement in successful vendor's evaluation, and agency reasonably took into account both the lower staffing of successful vendor's quotation, and evaluated strengths of protester's quotation, in determining that protester's technical superiority did not overcome successful vendor's lower evaluated cost.

DECISION

Sumaria Systems, Inc. protests the issuance of a task order to Dynamics Research Corporation (DRC) by the Department of Defense, United States Transportation Command (USTRANSCOM), under the General Services Administration's Federal Supply Schedule (FSS) contract for general purpose commercial information technology equipment, software, and services (Schedule 70), and pursuant to request for quotations (RFQ) No. HTC711-07-Q-0006 for corporate data office engineering and modeling services. Sumaria objects to the evaluation and selection of DRC as the successful vendor on the basis of DRC's lower-priced quotation.

We deny the protest.

BACKGROUND

The RFQ, dated November 2, 2006, announced that USTRANSCOM would issue a labor hour task order for an initial base period (the remainder of federal fiscal year

2007), followed by three 1-year options to the successful FSS vendor.¹ Contracting Officer's (CO) Statement at 1. The RFQ set forth two equally-weighted non-price factors--past performance, and mission capability--which, when combined, were significantly more important than price. RFQ attach. 2, Quote Evaluation Criteria, at 1. The mission capability factor was divided into two subfactors: staffing and technical approach. Id. at 4. For each subfactor, the RFQ described an assessment of both the quotation's merit and the "Quote Risk," which it described as a measure of "the weaknesses associated with the offeror's proposed approach as it relates to accomplishing the requirements of the solicitation." Id. at 3-5. The RFQ also stated that "overall price . . . will be evaluated for completeness and reasonableness considering the proposed approach in terms of labor or skill mix, labor hours, any other direct costs, and quoted discounts." Id. at 5.

After receiving initial quotations and past performance information, the evaluators rated DRC's past performance "significant confidence," and Sumaria's "high confidence."² Under the mission capability factor, DRC was rated "yellow" with "moderate" risk for both subfactors, while Sumaria was rated "blue" with "low" risk under the staffing subfactor, and "green" with "low" risk under the technical approach subfactor.³ Agency Report (AR), Tab 15b, Initial Rating Team Worksheets.

¹ As discussed further below, this RFQ was issued to re-compete a requirement that had originally resulted in selection of Sumaria. The decision to issue a new RFQ followed after issues arose at a debriefing of DRC, which resulted in the agency concluding that, during discussions, the agency had inadvertently failed to make DRC aware of a potentially significant concern, and that the omission could have affected the outcome of the competition. AR, Tab 21, Memorandum for Record, at 1.

² The relevant adjectival ratings for past performance were described thus: "High Confidence--Based on the offeror's performance record, essentially no doubt exists that the offeror will successfully perform the required effort," and "Significant Confidence--Based on the offeror's performance record, little doubt exists that the offeror will successfully perform the required effort." RFQ attach. 2, Quote Evaluation Criteria, at 1. Past performance references for both offerors were considered "very highly relevant" throughout.

³ The color scheme used for rating vendors quotations described the relevant ratings as "Blue (Exceptional)--Exceeds specified minimum performance or capability requirements in a way beneficial to the [agency]; quote must have one or more strengths and no deficiencies," "Green (Acceptable)--Meets specified minimum performance or capability requirements delineated in the Request For Quote," and "Yellow (Marginal)--Does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Quote; but any such uncertainty is correctable." RFQ attach. 2, Quote Evaluation Criteria, at 3.

After conducting multiple rounds of discussions and requesting interim, then final, revised quotations, the evaluators rated both vendors “high confidence” under the past performance factor. Under the mission capability factor, DRC’s final revised quotation was rated “blue” with “low” risk under the technical approach subfactor, and “green” with “low” risk under the staffing subfactor, while Sumaria’s was rated “blue” with “low” risk under both subfactors. AR, Tab 15d, Final Rating Team Worksheets.

The CO’s source selection decision (SSD) discussed the strengths of both quotations, and decided that the three strengths identified for Sumaria under the technical approach subfactor would provide “more benefit to the government than DRC’s two strengths.” AR, Tab 15, SSD, at 25.⁴ Under the staffing subfactor, the SSD also recognized that “Sumaria’s staffing approach has significantly more benefit to the government than DRC’s staffing approach by offering the strengths identified.” Id. at 26. Nevertheless, the CO concluded the SSD by selecting DRC to receive the task order, at an evaluated cost of \$13,013,703.34, over Sumaria’s cost of \$13,787,699.67. Id. at 26. While acknowledging the strong points in Sumaria’s quotation under the mission capability factor, the CO reasoned that she “cannot reasonably determine that the superiority of Sumaria’s approach outweighs the cost premium of \$773,996.33 over the life of the contract.” Id. at 28.

In a letter dated February 16, 2007, delivered by e-mail that afternoon, the CO announced her new selection. She then offered Sumaria a debriefing, thus:

You may request a post-award debriefing pursuant to FAR [Federal Acquisition Regulation] 15.506 by submitting a written request to [the e-mail address of the contract specialist] to be received by the undersigned [sic] within three days after the date you receive this notification in accordance with FAR 15.503(b). Post-award debriefing of schedule contractors will be conducted pursuant to FAR 15.506.

AR, Tab 16, Award Notices to Sumaria, at 2.

The same day, Sumaria responded with an e-mail, requesting a debriefing “as soon as possible.” Initially, the agency offered a tentative date of February 22, which Sumaria accepted. However, on February 20, the contracting specialist rescheduled

⁴ In discussing the two identified technical approach strengths for DRC, the contracting officer noted that one provided no advantage over a similar technique used by Sumaria, while the other was limited to a fairly narrow aspect of the PWS and thus provided limited benefit to the agency. AR, Tab 25, SSD, at 25.

the debriefing for February 27. Supp. Protest exh. 5. After the debriefing, Sumaria filed this protest with our Office on February 28.⁵

DISCUSSION

Sumaria's initial protest objected that the evaluators failed to properly assess the risk posed by DRC, given the company's record, in Sumaria's view, of poor past performance. Sumaria also argued that the CO had disregarded the significance of non-price factors described in the RFQ, in favor of an award based on price.⁶ Protest at 6-7. After the agency filed its report in answer to the protest, which included relevant documents, Sumaria supplemented its protest with arguments that the agency miscalculated DRC's past performance and staffing risk, and failed to consider the significance of Sumaria's evaluated superiority under the mission capability factor. Sumaria also argued that the agency unreasonably based its source selection on DRC's lower proposed costs, which, in Sumaria's view, will prove illusory because of DRC's inadequate staffing levels. Our decision will address these arguments in turn.

⁵ The agency argues that this protest is untimely because it was filed more than 10 days after announcement of the selection, and should not have been delayed until after the debriefing (because a debriefing in an FSS procurement is not a "required" debriefing). See FAR § 8.404(a). Sumaria argues that it was misled by the specific invocation of FAR § 15.506 in the selection notice, that the firm raised its objections immediately after the debriefing at which it obtained more specific information, and that the circumstances justify considering its protest as timely. Under the facts here, we think this protest was timely filed. See Raith Eng'g & Mfg. Co., B-298333.3, Jan. 9, 2007, 2007 CPD ¶ 9 at 3 (diligent protester may file a timely protest based on information obtained at a debriefing, even though that debriefing was not a required debriefing).

⁶ Both the initial and supplemental protest also argued that various agency actions--principally the decision to re-compete this requirement (after determining that discussions in an earlier procurement had been inadequate), and the multiple rounds of discussions with DRC--were either unjustified, or demonstrated that agency personnel were acting in bad faith. Sumaria has failed to provide any factual basis to question the propriety of the agency's actions. Nor do we accept that there was an absolute limit on the number of rounds of discussions that the agency could hold, even where those discussions were of little benefit to Sumaria, given its highly favorable evaluation. While Sumaria argues that agencies are not required to hold multiple rounds of discussions, it has not shown that the agency's actions here were improper.

Past Performance Evaluation

With respect to the evaluation of past performance, Sumaria argues that the record did not justify a rating of “High Confidence” for DRC because one of DRC’s references expressed concern about the firm’s ability to **[deleted]**, and because the agency failed to consider a “satisfactory” contractor performance assessment report (CPAR) about one of DRC’s team members—even though the agency considered the CPAR in the earlier competition for this requirement.

The agency responds that its assessment of past performance was reasonable. The CO acknowledges that one of DRC’s references initially expressed concerns, and that the concerns contributed to a lower past performance evaluation of the initial quotation. The CO also explains that the agency subsequently obtained a more favorable past performance update for that contract and telephoned the source of the original unfavorable reference again for clarification. In the agency’s view, which it documented in a contemporaneous memorandum, these references, taken together, justified the more favorable “high confidence” assessment of DRC’s past performance in the final evaluation. Sumaria disputes the agency’s characterization of the additional information, and argues that the clarifying phone call was less favorable than the agency claims, and thus the concerns reflected in the lower initial evaluation were not reasonably resolved.

The evaluation of an offeror’s past performance, including the determination of the relevance and scope of an offeror’s performance history, is a matter of agency discretion that we will not question unless shown to be unreasonable, undocumented, or inconsistent with the solicitation criteria or applicable statutes or regulations. Family Entm’t Servs., Inc., B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. The contemporaneous record here documents the evaluators’ consideration of the differing views from the references and their judgment, thus:

In light of the new information, the evaluation team determined sufficient corrective actions had been taken to address management of **[deleted]** and it no longer posed a concern to the level of confidence of performance. DRC’s past performance was raised from very highly relevant with significant confidence to very highly relevant with high confidence.

AR, Tab 12, Memorandum for Record, at 2.

Although, as discussed, Sumaria disputes the evaluators’ judgment on this matter, the protester has not demonstrated that the agency’s upward revision to DRC’s past performance evaluation after reviewing the additional performance update and contacting the original reference again, was unreasonable.

The agency also acknowledges that it did not include in the past performance evaluation a “satisfactory” CPAR for one of DRC’s team members, which the agency

had obtained in the earlier iteration of this competition. Sumaria argues that, by virtue of the fact that the evaluators had obtained that particular CPAR during the earlier competition, and had rated DRC's past performance lower at that time, the agency was obliged to consider that CPAR again during this re-competition, and similarly lower DRC's past performance rating. The agency responds that the scope of the past performance inquiry under this RFQ was more narrowly focused than the one used previously, and the CPAR at issue was beyond that scope.⁷ Sumaria has not shown that the RFQ required consideration of the same past performance information used in the earlier competition, and we conclude that the agency's scope of past performance inquiry and evaluation were reasonable and were applied in a consistent manner to both Sumaria and DRC.⁸

Mission Capability Evaluation

With respect to the mission capability evaluation, Sumaria challenges the evaluation of DRC under the staffing subfactor, and the role of staffing in the ultimate selection. Sumaria argues that DRC's staffing was inadequate for the firm's technical approach, and that the "low risk" rating under the staffing subfactor was unreasonable. Thus Sumaria contends that DRC's staffing levels should have caused the agency to conclude that the firm's cost of performance would be significantly higher than DRC proposed.

In response, the agency states that it assessed DRC's staffing as adequate to perform the PWS, and that neither the "low" risk rating nor DRC's evaluated cost was in error. The agency also maintains that the source selection decision reflects an understanding of, and carefully-considered judgment about, the significance of DRC's lower staffing.

Where, as here, an agency issues an RFQ to FSS contractors under FAR Subpart 8.4 and conducts a competition (see FAR § 8.405-2), we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the

⁷ Sumaria does not meaningfully dispute the agency's argument that its approach was consistent for both offerors. The agency notes that two CPARs for Sumaria, which had been considered in the earlier procurement, were similarly excluded in this procurement. Since this reevaluation stands on its own, we do not consider relevant Sumaria's argument that those CPARs "would not have negatively impacted Sumaria's past performance rating" in this procurement because Sumaria received a high confidence rating in the earlier procurement. Protester's Supp. Comments at 7.

⁸ We do not agree with Sumaria's characterization of the issue as involving past performance information "too close at hand" to be ignored in the evaluation. See, e.g., International Bus. Servs., Inc. B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. There appears to be no dispute that the information was known by the evaluators. However, the reference was not within the scope of the past performance review.

solicitation. In reviewing an agency's technical evaluation of quotations under an RFQ, we will not reevaluate the quotations; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation and applicable procurement statutes and regulations. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6-7.

Here, the evaluation clearly recognizes that Sumaria proposed a superior technical and staffing approach, and concludes that Sumaria's approach was materially stronger than DRC's proposed approach. We also think that, fairly read, the SSD conveys the CO's conclusion that apparent references by the evaluators to two additional capabilities in DRC's quotation were not, in fact, what DRC had proposed. Specifically, the record reflects that the evaluators initially believed that a reference to the agency's enterprise capability management process in DRC's initial quotation might have meant that DRC intended to provide comprehensive enterprise capabilities management as an additional capability. During discussions, DRC clarified that it understood the PWS requirements, and expressly stated that it intended to provide only **[deleted]** specified in the PWS. AR, Tab 33b, DRC Revised Quotation, at 19-20; AR, Tab 15, Source Selection Decision, at 20. Similarly, while DRC's quotation included a discussion of support for the configuration control board, the CO observed that this support was not required by the PWS (as she noted, the configuration control board task is performed by one of DRC's own team members under a separate contract), and had not been evaluated as a strength. Nor, for that matter, had DRC staffed such a task.

Sumaria focuses on one sentence in the SSD regarding these two issues, which states that DRC's "proposed staffing approach was adequate to meet minimum performance capability requirements of the PWS but inadequate to support the proposed additional capabilities not required by the PWS." Id. In the context of the CO's further discussion of those additional capabilities discussed above, we disagree with Sumaria's argument that the sentence indicates that the evaluators thought DRC was understaffed. Rather, the record confirms that the evaluators reasonably found, and the CO correctly understood, that DRC's staffing approach was to perform the tasks required by the PWS without additional capabilities or strengths (and, as discussed previously, DRC received the final rating of "green" with "low" risk under the staffing subfactor, in contrast with Sumaria's higher ratings of "blue" with "low" risk under both the technical and staffing subfactors).⁹

⁹ Sumaria argues that the agency's claims--first made in its supplemental agency report--that DRC's staffing was based on "in-house efficiencies" lack support in the contemporaneous record. While we agree that the agency has not cited to the contemporaneous record for these claims, Sumaria has failed to validate the premise
(continued...)

Although Sumaria points out that the principal reason for the lower evaluated cost of DRC's proposal was its use of staffing at a lower level than Sumaria's proposed and historical staffing levels--by approximately [deleted] full time equivalent employees--Sumaria has not meaningfully challenged the agency's underlying conclusion that DRC can perform in accordance with the PWS at its lower staffing level. An agency may reasonably find a vendor's staffing level that is lower than the protester's to be acceptable because vendors may propose different levels of staffing, depending on each offeror's technical approach and proposed efficiencies. Remtech Servs., Inc., B-292182, July 17, 2003, 2003 CPD ¶ 133 at 8.

CONCLUSION

The CO's consideration of the competing quotations reflects a thorough analysis, which considered each of the areas where Sumaria's quotation offered significant enhancements over the performance required in the PWS, gave proper emphasis to the differences, and appropriately applied greater emphasis to the non-price factors. Although Sumaria argues that the price differential of \$773,996.33 is insufficient to overcome its evaluated strengths, the record confirms that the CO's judgment was set forth in detail in her source selection decision, and that her judgment was reasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel

(...continued)
that it was necessary for DRC to provide discrete, identifiable efficiencies in order to perform the PWS with fewer staff than Sumaria.