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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Tiger Enterprises, Inc.

File: B-293951

Date: July 26, 2004

Lillian K. Mauldin for the protester.
A. Neil Stroud, Esq., United States Marine Corps, for the agency.
John L. Formica, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of quotations and selection of the awardee's quotation for award cannot be determined reasonable where the evaluation and source selection are not supported by the record.

DECISION

Tiger Enterprises, Inc. protests the United States Marine Corps's selection of B&E Management, Inc. for award of a contract, under request for quotations (RFQ) No. M67001-04-Q-0034, for the lease and maintenance of washers and dryers at Camp Lejeune, North Carolina.

We sustain the protest.

The RFQ, issued as a small business set-aside, provided for the award of a contract for a base period of 5 months, with three 1-year options, to the vendor submitting the quotation determined to represent the best value to the government based upon the following evaluation factors (listed in descending order of importance): price, technical compliance, management/transition approach, and past performance. The solicitation provided that price was significantly more important than the technical, management and past performance factors combined. RFQ at 1-2. The solicitation also provided for the use of commercial item procedures under Federal Acquisition Regulation (FAR) subpart 12.6.

The agency received quotations from five vendors. Based on its evaluation of the quotations, the agency determined that "technical compliance was achieved" by all vendors because each of the vendors had elected to perform the contract in part through the purchase of the existing equipment (an option permitted by the RFQ). Evaluation Determination at 1. With regard to the evaluation of quotations under the management/transition approach and past performance factors, the evaluation record indicates only that the "Management Plans submitted by all [vendors] were deemed adequate," and that three of the vendors, including Tiger, "received favorable [past performance] ratings." Id. In this regard, the agency noted that "being a new company," B&E "did not have any past performance history," and therefore assigned that firm a "neutral rating" under the past performance factor.

The agency concluded that "[a]ll evaluation factors were met by all proposals submitted," and that because "[p]rice is the most important factor . . . B&E Management appears to be the apparent successful offeror." Evaluation Determination at 1. The agency, however, found B&E to be nonresponsible because B&E was "a new small business," and forwarded the matter to the Small Business Administration (SBA) for consideration under that agency's certificate of competency (COC) procedures. After first determining that B&E was a small business for the purposes of this procurement, the SBA issued a COC to B&E during the course of this protest.

Tiger protests the agency's evaluation of its quotation under the past performance factor, and contends that the agency failed to perform an adequate price/technical tradeoff when it selected B&E as the apparent successful vendor. Tiger argues in the alternative that contrary to the solicitation's evaluation plan, the agency awarded this contract on a low-priced, technically acceptable basis.

Under FAR subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items, the contracting officer is required to "[s]elect the offer that is most advantageous to the Government based on the factors contained in the solicitation," and to "[f]ully document the rationale for selection of the successful offeror including discussion of any trade-offs considered." FAR § 12.602(c). Although the FAR does not specify what is required for compliance with the mandate that the contracting officer "[f]ully document" the rationale for the source selection, the fundamental principle of government accountability dictates that an agency maintain a record adequate to allow for meaningful review. Checchi and Co. Consulting, Inc., B-285777, Oct. 10, 2000, 2001 CPD ¶ 132 at 6; Matrix Int'l Logistics, Inc., B-272388, B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 5. An agency which fails to adequately document the rationale for its source selection, including any trade-offs considered, bears the risk that its determinations will be considered unsupported, and that absent such support, our Office may lack a basis to find that the agency had a reasonable basis for its determinations. Matrix Int'l Logistics, Inc., supra; see Universal Bldg. Maint., Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 5.

Here, the contemporaneous record of the evaluation of the five quotations and the agency's source selection consists of a 1-½ page "evaluation determination" memorandum, and a matrix setting forth the past performance ratings of the vendors as reported by their respective references. We find that these documents fail to adequately explain the basis for the agency's source selection or any trade-offs the agency considered in selecting B&E's lower-priced quotation for award.

The evaluation determination memorandum provides, with regard to three of the vendors, including Tiger, only that all three received "favorable" past performance ratings. However, the past performance matrix demonstrates that Tiger's references uniformly rated Tiger's past performance as "excellent" overall, while one of the other vendors received mostly "good" past performance ratings, and the other vendor received one "marginal" rating. The record does not include any narrative explanation regarding the references' ratings of the vendors' past performance, or the agency's evaluation of the vendors' past performance. In light of the fact that Tiger's references gave Tiger significantly higher ratings than the other vendors received from their references, we agree with the protester that the record does not support the evaluation of all of these vendors under the past performance factor as "favorable."

Additionally, with regard to the source selection decision, the contemporaneous record provides only that "[a]ll evaluation factors were met by all proposals submitted," and that because "[p]rice is the most important factor . . . B&E Management appears to be the apparent successful offeror." Evaluation Determination at 1. These statements fail to adequately explain whether and on what basis the agency determined that the price advantage associated with B&E's quotation outweighed Tiger's apparent advantage under the past performance factor. Indeed, given the statement in the record that "[a]ll evaluation factors were met by all proposals submitted," it appears that the agency may have made award to B&E as the vendor submitting the low-priced, technically acceptable quotation, thereby abandoning the solicitation's stated "best value" approach to selecting the awardee. See Johnson Controls World Servs., Inc.; Meridian Mgmt. Corp., B 281287.5 et al., June 21, 1999, 2001 CPD ¶ 3 at 3-4 (an agency must conduct the evaluation in accordance with the terms of the solicitation; it does not have discretion to announce in the solicitation that one evaluation scheme will be used and then follow another in the actual evaluation). In sum, the record here does not adequately explain the bases for the agency's source selection or any trade-offs the agency considered in selecting B&E's lower-priced quote for award, and we sustain the protest on this basis.[1]

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[1] Tiger contends that the agency's conduct in this acquisition evidences bias in favor of B&E and against Tiger, and requests that our Office recommend that the acquisition continue with a different contracting officer. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations,

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We recommend that the agency review the solicitation and determine whether it intends to award a contract on a best-value basis or to the vendor submitting the low-priced, technically acceptable quotation. If the agency determines to award the contract on a low-priced, technically acceptable basis, it should amend the solicitation accordingly, seek revised quotations, and then evaluate quotations and make award consistent with the terms of the revised solicitation. If the agency determines to award the contract on a best-value basis consistent with the RFQ, we recommend that it fully document the rationale for the selection of the successful vendor, including discussing any trade-offs considered, consistent with the requirements of FAR § 12.602(c). We also recommend that Tiger be reimbursed for the expenses of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2004). In accordance with section 21.8(f)(1) of our Regulations, Tiger's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel

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inference, or suppositions. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 28. Although we agree with the protester, as set forth above, that the agency's evaluation and selection of B&E for award cannot be found reasonable, we find no credible evidence of bias or bad faith on the part of the contracting officer or any other agency representative.