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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Orion Management, LLC

File: B-400680.2

Date: January 15, 2009

Christopher A. Morin for the protester.

William A. Roberts III, Esq., and Richard B. O’Keeffe, Jr., Esq., Wiley Rein LLP, for Chugach/Evergreen, LLC, an intervenor.

Maj. Carla T. Peters, Department of the Army, for the agency.

Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where protester fails to demonstrate that agency’s evaluation of proposal as technically marginal with moderate risk and agency’s exclusion of proposal from revised competitive range on that basis were unreasonable.

DECISION

Orion Management, LLC (Orion) of Springfield, Virginia, protests the exclusion of its proposal from the revised competitive range under request for proposals (RFP) No. W9113M-07-R-0004, issued by the Department of the Army (Army), Space and Missile Defense Command, for installation and testing of an integrated commercial intrusion detection system-IV (ICIDS-IV).¹

We deny the protest.²

¹ The protester was not represented by counsel and, therefore, did not have access to nonpublic information pursuant to the terms of a protective order. Accordingly, our discussion in this decision is necessarily general; our conclusions, however, are based on our review of the entire record, including nonpublic information.

² A related protest, brought by a different offeror, was denied by our Office on January 8, 2009. See Cambridge Sys., Inc., B-400680; B-400680.3, Jan. 8, 2009, 2009 CPD ¶ __.

The solicitation seeks to acquire an ICIDS-IV detection system, to be used to monitor designated areas and facilities for all military installations located inside and outside the continental United States. The goal is to provide a standard configuration that will allow personnel to take the required action when unauthorized attempts to enter these designated areas and facilities are detected.

The solicitation was set aside for small businesses, and contemplated the award of an indefinite-delivery, indefinite-quantity task order contract for a base and five 1-year ordering periods to the offeror whose proposal was determined to represent the best value to the government. The solicitation provided for proposals to be evaluated under three evaluation factors: technical (with five subfactors), past performance, and price. The technical factor was more important than past performance, which was more important than price and, when combined, the non-price factors were significantly more important than price. The solicitation advised offerors that to receive consideration for award, proposals had to be rated no less than acceptable under the technical factor and subfactors and the past performance factor. RFP at 144.

The agency received several proposals, including Orion's, by the extended closing date. Based on the initial evaluation by the source selection evaluation board (SSEB), the agency determined that only the proposal submitted by Cambridge Systems (excellent with low risk) would be included in the competitive range. Orion's proposal, and those of the other offerors, which were rated either marginal or unacceptable, was excluded from the competitive range and from further consideration for contract award.³ When pre-award notice of the prospective

³ The proposal ratings relevant to this protest were defined as follows:

Marginal	Overall quality cannot be determined because of errors, omissions or deficiencies which are capable of being corrected without a major rewrite or revision of the proposal.
Unsatisfactory	A proposal which contains major errors, omissions or deficiencies, or an unacceptably high degree of risk in meeting the Government's requirements; and these conditions can not be corrected without a major rewrite or revision of the proposal.
Low Risk	Based on Offeror's past performance record, essentially no doubt exists that the Offeror will successfully perform the required effort.
Moderate Risk	Based on the Offeror's past performance record, some doubt exists that the Offeror will successfully perform the required effort.

Agency Report (AR) exh. 7, SSEB Findings at 10-11 (Apr. 24, 2008).

awardee was sent to the offerors excluded from the competitive range, Offeror A,⁴ whose proposal was rated marginal with low risk, filed a timely challenge to the size status of Cambridge. The Small Business Administration ultimately determined that Cambridge was not a small business concern under the applicable size standard and the Army eliminated the firm's proposal from further consideration.

After the elimination of Cambridge from the competition, the agency decided to re-establish the competitive range, considering all offerors' proposals previously eliminated from the initial competitive range. The contracting officer reviewed the evaluation results of the remaining offerors, including the associated strengths and weaknesses of their proposals. In this regard, the initial proposal submitted by Offeror A was rated marginal overall under the technical factor, with two significant strengths, nine significant weaknesses, and one deficiency. Offeror B's proposal was rated marginal overall under the technical factor, with 1 significant strength, 13 significant weaknesses, and 1 deficiency. Each proposal was rated low risk under the past performance factor. In contrast, under the technical factor, Orion's initial proposal was rated marginal overall, with no significant strengths, 24 significant weaknesses, and 10 deficiencies; under the past performance factor, its proposal was rated moderate risk. AR exh. 7, SSEB Findings at 13 (Apr. 24, 2008). On this basis, the contracting officer determined that the proposals of Offeror A and Offeror B were the most highly rated and only included those proposals in the revised competitive range. AR exh. 19, Revised Competitive Range Determination at 1-2.

Orion protests the exclusion of its proposal from the revised competitive range, alleging that its initial proposal was rated the same as the proposals submitted by Offeror A and Offeror B. Protest at 2-3. It is well settled that an agency is not required to retain in the competitive range a proposal that is not among the most highly rated or that the agency otherwise reasonably concludes has no realistic prospect of award. Federal Acquisition Regulation § 15.306(c)(1); Safety-Kleen (Pecatonica), Inc., B-290838, Sept. 24, 2002, 2002 CPD ¶ 176 at 5-6; SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5.

Here, the Army has responded to the protest, providing detailed evaluation documentation that it maintains reasonably establishes why Orion's proposal was excluded from the revised competitive range. None of the evaluation findings and conclusions was refuted by the protester. Rather, Orion merely reiterates the position stated in its protest, namely, that the agency should have included its proposal in the revised competitive range because its rating was "almost identical" to the other two offerors' proposals. Protester's Comments at 2-3.

⁴ As the procurement here is ongoing, we have designated the offerors selected for inclusion in the revised competitive range as Offeror A and Offeror B.

We have reviewed the record with respect to the protester's allegations and find no basis to question either the agency's evaluation conclusions or the decision to exclude the protester's proposal from the revised competitive range based on those evaluation findings. In short, the record shows that the agency's evaluation of Orion's proposal identified a significant number of deficiencies in the proposal (10) compared to 1 deficiency each in the proposals that were included in the revised competitive range. In addition, both proposals included in the competitive range were assessed as presenting low performance risk, while Orion's proposal was assessed as presenting moderate risk. These two differences alone lead us to conclude that the agency reasonably distinguished between the protester's proposal, and the proposals of the other two offerors included in the competitive range, in making its revised competitive range determination.

Moreover, we note that Orion has not raised substantive challenges to any of the agency's evaluation conclusions about Orion's proposal. Where, as here, a protester advances arguments to which the agency responds in detail, and the protester offers no rebuttal, there generally is no basis for our Office to question the agency's evaluation findings or subsequent conclusions based on those findings. See Industrial Prop. Mgmt., B-291336.2, Oct. 17, 2003, 2003 CPD ¶ 205 at 5.

The protest is denied.

Gary L. Kepplinger
General Counsel