Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Brisk Waterproofing Company, Inc.

File: B-276247

Date: May 27, 1997

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DIGEST

1. Protest that contracting agency improperly evaluated proposals is denied where the record shows that the evaluation was reasonable and consistent with all of the evaluation factors and subfactors.

2. Protest that contracting agency improperly utilized an unstated factor as a best value determinant is denied where the alleged unstated factor was simply an additional consideration to a rationale which, by itself, fully supported the source selection authority's determination that the higher-priced, higher technically rated proposal represented the best value to the government.

DECISION

Brisk Waterproofing Company, Inc. protests the award of a contract to Waters Craftsmen, Inc. under request for proposals (RFP) No. N62477-95-R-0027, issued by the Department of the Navy for the historic preservation and restoration of the U.S. Naval Academy Chapel in Annapolis, Maryland. Brisk argues that the Navy's evaluation of proposals and source selection decision were improper.

We deny the protest.

The successful offeror would be awarded a fixed-price contract to perform exterior masonry and dome/roof repairs at the Chapel, with options to perform site repairs and door and window repairs. Award would be made, without discussions, to the offeror whose proposal was deemed the best value to the government, considering technical/management factors and price. Technical/management factors were more important than price.

The RFP listed three equally important technical/management factors: specialized construction experience, project management, and past performance. The project management factor consisted of three subfactors: staffing, work plan, and subcontracting plan. Past performance findings would be used to validate proposals against established evaluation criteria and to assign an overall risk to the government for successful performance.

The Navy received four proposals by the November 13, 1996 closing date. After the individual members of the technical evaluation panel (TEP) conducted an independent review of each proposal, the panel met as a team to develop a consensus evaluation.[1] The proposals were adjectivally rated under each factor and subfactor as exceptional, acceptable, marginal, or unacceptable. The final evaluation results were as follows:

	Waters	**Brisk**
Technical/Management	**Acceptable**	**Marginal**
Specialized Construction Experience	Acceptable	Acceptable
Project Management	Acceptable	Unacceptable
1. Staffing	Acceptable	Unacceptable
2. Work Plan	Exceptional	Unacceptable
3. Subcontracting Plan	Acceptable	Marginal
Past Performance/Risk	Outstanding/Low	Outstanding/High
Price	**$2,535,230**	**$2,344,600**

[1]Brisk asserts that the TEP's consensus ratings improperly failed to mirror those of the individual evaluators. However, agency evaluators may discuss their individual evaluations with each other in order to reach valid consensus ratings since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. See The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271 at 7-8. Consensus ratings need not be those initially awarded by the individual evaluators; such ratings may properly be determined after discussions among the evaluators. The overriding concern in these matters is whether the final ratings assigned accurately reflect the relative merits of the proposals. See Household Data Servs., Inc., B-259238.2, Apr. 26, 1995, 95-1 CPD ¶ 281 at 4 n.2.

The TEP determined that Waters's proposal, the only one rated acceptable, was reasonably priced and represented the best value to the government.[2] The contracting officer, serving as the source selection authority (SSA), concurred with the TEP's determination. Her source selection decision discussed in substantial detail the favorable qualities of Waters's proposal, as well as various shortcomings in Brisk's proposal. She concluded that while Waters's proposal was rated acceptable overall, its "outstanding, exceptionally qualified team members truly demonstrated the added value" of its proposal which was substantiated by the firm's outstanding past performance and associated low risk. The SSA's conclusion was followed by her statement that Waters's status as the stained glass contractor at the Chapel further substantiated the best value determination since the government would only have to deal with one contractor at that facility. After award was made to Waters, Brisk received a debriefing and filed this protest.

Brisk's protest challenges the Navy's evaluation of proposals in numerous areas. Brisk also alleges that the Navy improperly utilized Waters's status as the stained glass window contractor for the Chapel as an unstated best value determinant.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation factors. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. Id. Further, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price results subject only to the tests of rationality and consistency with the RFP's evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111, 1120-1121 (1976), 76-1 CPD ¶ 325 at 12.

The specialized construction experience factor required offerors to have experience with a minimum of three historic preservation and/or renovation projects, and to complete a form for each project chosen to present its experience best illustrating its suitability for the Chapel project.

Waters's proposal was rated acceptable. The TEP noted that although most of the firm's experience was on projects of a smaller value and spread over several phases, Waters demonstrated experience in all aspects of work under the solicitation. The TEP noted in particular that the firm's experience with the restoration of the Cadet Chapel at the U.S. Military Academy at West Point demonstrated experience on sensitive projects with historical significance.

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[2]The third proposal was rated marginal, at the highest price received, and the fourth proposal was rated unacceptable.

Brisk argues that the Navy improperly failed to downgrade Waters's proposal for its lack of experience with a project of the size and scope of the Chapel project. Brisk asserts that the value of this project--$2.5 million over approximately 1 year--far exceeds the value of the largest project previously performed by Waters during a similar time frame. As noted above, however, the TEP was clearly aware of this fact but considered that Waters's breadth and type of experience, undisputed by Brisk, was sufficient to garner its proposal an acceptable rating; Brisk's disagreement with this conclusion does not render the evaluation unreasonable. Esco., Inc., supra. Brisk's assertion that its proposal should have been rated higher given its experience with large projects, ipso facto, ignores the TEP's rationale for the firm's acceptable rating. While Brisk's projects individually contained most of the significant aspects involved in the Chapel project, no single project matched its requirements in terms of the total scope and dollar value, and most were smaller-scaled projects containing either one or two of the elements of this solicitation. Brisk has given us no basis to believe that there is any substantive distinction between the two proposals so as to render the Navy's evaluation unreasonable.[3]

The first project management subfactor, staffing, consisted of two sub-subfactors, organizational structure and project staff resumes. As to the former,[4] the RFP required offerors to provide a chart that clearly delineates contractor/subcontractor relationships and lines of authority, showing names, titles, firm names, and organizational relationships, and identifying whether each person is located on-site or in the home office and whether each person is full- or part-time. Brisk's proposal was rated unacceptable because it did not provide this organizational chart and because the TEP could not determine the roles and lines of responsibilities of

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[3]Brisk's pleadings contain a number of scattered arguments amounting to an allegation that Waters's proposal should have been downgraded because it does not employ sufficient personnel to be able to "self-perform" this project properly. However, neither this evaluation factor nor any other evaluation factor provides for such a consideration. Brisk also contends that Waters's proposal misrepresented the full-time availability of its president for this project because he will also be managing the stained glass contract. We see no misrepresentation here. Proposals under this solicitation were submitted several months before the stained glass contract was awarded. Since a vendor has no assurance that it will be awarded every contract for which it submits a proposal, the fact that a vendor offers the same individual for more than one on-going procurement does not mean that the proposed individual is being offered without any expectation of this availability. Biospherics, Inc., B-253891.2 et al., Nov. 24, 1993, 93-2 CPD ¶ 333 at 4-5.

[4]As discussed further below, Brisk's allegations with respect to the project staff resumes sub-subfactor are untimely.

the proposed personnel, which would be on-site or off-site, and how much time each would be committing to the project.

Brisk objects that it was not required to submit this chart because it did not propose to subcontract for the critical work. However, the Navy points out, and Brisk concedes, that the firm did propose to subcontract out some of the work; as a result, the chart was a required element. Brisk alternatively argues that its proposal elsewhere contained the information sought by the evaluators. Our review of the proposal shows no such thing. While there is some minimal information concerning the roles and lines of responsibilities for the proposed key personnel, the proposal does not spell out whether each of these employees will be on- or off-site, or how much time each will commit to the project. As a result, we have no basis to question the Navy's evaluation.

The second project management subfactor, work plan, also consisted of two sub-subfactors, a narrative work plan and a construction path method (CPM) chart. As to the former, offerors were to provide a three-page maximum narrative description of how they planned to control all phases of work, identifying critical activities, techniques to minimize schedule and other problems, and any other innovative methods. Brisk's proposal was rated unacceptable because the TEP believed Brisk's work plan was general and failed to provide specific techniques or innovative methods as to how the firm intended to address such critical activities as maintaining public access and building egress, weather protection, or phasing.

In its protest, Brisk argued that its proposal's work plan and CPM chart demonstrated its ability to properly manage the project, including the areas of concern to the TEP. However, our review of the firm's work plan shows that its references to all of the areas of concern are either vague or nonexistent, leaving us no basis to question the agency's judgment.[5]

In its comments, Brisk argues, for the first time, that the Navy improperly allowed Waters to exceed the three-page limit for the narrative work plan by favorably evaluating not only Waters's narrative work plan, but an additional three pages of staging charts and text. The Navy asks that we dismiss this argument as untimely since Brisk received the agency report on this protest on March 14, 1997, and filed its comments on March 25--11 days later. While Brisk received permission to file its comments later than the 10 calendar days required by our Bid Protest Regulations, 4 C.F.R. § 21.3(i) (1997), the granting of such an extension does not waive the

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[5]This same type of general approach to writing the proposal resulted in Brisk's marginal rating under the third project management subfactor, subcontracting plan. The protester's challenge to this rating is essentially a hollow disagreement with the agency's view and does not make it unreasonable.

timeliness requirements for filing bid protests. Cygnus Corp., B-275181, Jan. 29, 1997, 97-1 CPD ¶ 63 at 4 n.2.

The timeliness of specific bases of protest raised after the filing of a timely initial protest depends upon the relationship the later-raised bases bear to the initial protest. See Kappa Sys., Inc., 56 Comp. Gen. 675, 681-684 (1977), 77-1 CPD ¶ 412 at 9-12. Where the later-raised bases present new and independent grounds of protest, they must independently satisfy our timeliness requirements. Ralph G. Moore & Assocs.--Recon., B-270686.3, June 5, 1996, 96-1 CPD ¶ 268 at 2-3; GE Gov't Servs., B-235101, Aug. 11, 1989, 89-2 CPD ¶ 128 at 4. Where the later-raised contentions merely provide additional support for an earlier, timely raised objection, we consider these additional arguments. Prospect Assocs., Inc., B-260696, July 7, 1995, 95-2 CPD ¶ 53 at 10-11.

While Brisk's protest generally alleged that the Navy's evaluation of proposals was erroneous as established by Brisk's superior project management, the fact that an initial protest includes a general allegation of impropriety provides no support for the timeliness of more specific allegations. GE Gov't Servs., supra. Brisk's specific statement was that the Navy advised the firm during the debriefing that its low proposal ratings were attributable, in part, to the Navy's inability to ascertain certain details in Brisk's work plan. Brisk asserted that its proposal, "including its work plan (which was limited by the RFP to 3 pages)" contained the detail of concern to the TEP.

This specific argument merely takes issue with the Navy's view concerning the contents of Brisk's work plan. In contrast, the specific allegation first raised in Brisk's comments was that Waters supplied the detail lauded by the Navy, in part, because it was allowed to submit additional pages. Despite the initial protest's reference to the page limitation, it does not suggest that Brisk believed the page limitation precluded it from supplying the detail sought by the Navy. As a result, this later-raised allegation is completely independent of the initial protest basis and is, as a result, untimely.[6] Id.

In any event, even if we found that Brisk's allegation had merit, the firm has suffered no prejudice by any impropriety on the agency's part. Waters's proposal was rated exceptional under the work plan subfactor, with acceptable ratings under the other two project management subfactors. Its exceptional rating was due only

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[6]We reach the same conclusion as to Brisk's later-raised allegations that the Navy unreasonably evaluated Waters's narrative work plan and both offerors' project staff resumes. The only tie between the initial protest and these allegations is a generalized assertion of impropriety which does not support the timeliness of the later-raised allegations. Id.

in part to the additional information it submitted, and Brisk has given us no reason to believe that Waters's proposal would have been rated less than acceptable under the subfactor or factor itself absent this additional information. Brisk's proposal, on the other hand, was rated unacceptable under the work plan subfactor, with unacceptable and marginal ratings under the other two project management subfactors, respectively. Brisk makes no proffer as to the additional information it would have provided had it been given the opportunity to do so; in fact, the record shows that it chose to provide only a two-page work plan instead of the three pages allowed. Under the circumstances, we do not believe Brisk would have had a substantial chance of receiving the award but for the agency's protected actions, and thus it suffered no prejudice. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, No. 96-1148, slip op. __ (Fed. Cir. Dec. 19, 1996).

Brisk's high risk rating was based upon its proposal's lack of specific information as to its organizational structure, experience of key personnel, and work plan. Brisk argues that the Navy improperly considered matters other than past performance in assessing it a high risk rating. While the solicitation included as part of the evaluation the consideration of risk based upon an offeror's past performance, and did not otherwise enumerate risk as an evaluation factor, the agency was not thereby precluded from also considering any risk arising from the offeror's approach or demonstrated lack of understanding. Consideration of the risk involved with respect to an offeror's proposal and approach is inherent in the evaluation of technical proposals. Communications Int'l Inc., B-246076, Feb. 18, 1992, 92-1 CPD ¶ 194 at 6.

Finally, Brisk contends that the Navy's source selection decision improperly considered Waters's status as the stained glass window contractor for the Chapel--a factor not enumerated in the solicitation--as a best value determinant. As noted above, the SSA's source selection decision enumerated the advantages found in Waters's proposal, as well as the shortcomings found in Brisk's proposal, and concluded that no offers aside from Waters's represented any value to the government. It was only after making this statement that the SSA noted that Waters's status as the stained glass contractor "further substantiated" the best value decision. Thus, we need not decide whether consideration of this factor was improper because the record shows that it was not a basis of the source selection decision, but a mere "substantiation" of the SSA's best value determination. Wilcox Elec., Inc., B-270097, Jan. 11, 1996, 96-1 CPD ¶ 82 at 6-7.

The protest is denied.

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