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Decision

Matter of: Karrar Systems Corporation

File: B-310661; B-310661.2

Date: January 3, 2008

Kevin P. Connelly, Esq., Seyfarth Shaw LLP, for the protester.
Ross Aboff, Esq., Archer & Greiner, PC, for BANC3, Inc., an intervenor.
Daniel Pantzer, Esq., Denise M. Marrama, Esq., and James F. Ford, Esq., Department of the Army, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to hold meaningful price discussions with protester regarding reasonableness of its proposed price is denied where agency did not find its price unreasonable and brought its only pricing concern to protester's attention.

2. Protest that awardee had an impermissible conflict of interest is denied where agency thoroughly considered circumstances in which awardee could have a conflict, and reasonably determined that there was no actual or potential conflict.

DECISION

Karrar Systems Corp. protests the award of a contract to BANC3, Inc., under request for proposals (RFP) No. W15P7T-07-R-A226, issued by the Department of the Army for program and administrative services for its R2 program. Karrar principally asserts that the Army failed to provide it with meaningful discussions, and that BANC3 had an impermissible organizational conflict of interest (OCI).

We deny the protest.

The solicitation contemplated a "best value" award of a 5-year indefinite-quantity/ indefinite-delivery (ID/IQ) contract based on four evaluation factors (in descending order of importance): technical (with subfactors for three sample task orders--pre-award, post-award and budget), management (with subfactors for transition plan to Aberdeen, transition plan, and management plan), performance risk, and price. RFP at 59. Four offerors responded to the RFP. A source selection evaluation board (SSEB) assigned the initial proposals adjectival ratings under the technical and

management factors and subfactors based on the proposals' evaluated strengths and weaknesses.[1] Following the initial evaluation, a competitive range determination, discussions, and the submission and evaluation of final proposal revisions, Karrar's proposal was rated good for the technical factor, with subfactor ratings of good for the pre- and post-award sample task orders, and acceptable for the budget sample task order, Final Source Selection Briefing at 21; acceptable for the management factor, with subfactor ratings of acceptable for transition to Aberdeen, good for transition plan, and acceptable for management plan, id. at 37; and low for performance risk. BANC3's proposal was rated overall acceptable under the technical factor, with acceptable ratings for each subfactor, id. at 13; overall good under the management factor, with ratings of good for each subfactor, id. at 29; and low for performance risk. Karrar's proposed price was $25,119,864, and BANC3's was $17,251,531.92. Id. at 44. Based on these evaluation results, the agency selected BANC3's proposal as offering the best value to the government. Karrar protests the award decision.

DISCUSSIONS

Karrar asserts that the Army failed to provide it with meaningful discussions with respect to its price proposal. The solicitation contained historical workload data. In its proposal, Karrar referred to an anticipated increase in workload during the option years of the contract. Based on this language, the Army questioned whether Karrar had based its price proposal on the historical data in the RFP, and whether it understood that the contract was being awarded as a 5-year ID/IQ contract, and not as a contract with option years. AR at 14. During discussions, the Army advised Karrar that: "Your proposal refers to Option years. This will be a Five (5) Year Indefinite Quantity Indefinite Delivery Type contract. Please confirm that your offer is based on the historical workload provided in the Performance Work Statement." Id. Karrar responded by removing the reference to option years and stating that "Prices … are based on our interpretation of the historical workload provided in the Performance Work Statement … for each SLIN in each year over a five (5) year period…." Id.

Karrar argues that the price discussions were not meaningful because the Army did not specifically ask what factors the firm had considered in determining its price. In this regard, Karrar asserts that it was clear from its proposal that it had used factors other than the historical data in determining its price. Karrar maintains that the Army was obligated to point out the specific additional elements that Karrar should not have considered in formulating its price, rather than merely asking it to confirm that its price was based on the historical workload information.

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[1] Under the technical factor and subfactors, proposals were rated outstanding, good, acceptable, or unacceptable. Under the management factor and subfactors, proposals also could be rated as susceptible to being made acceptable.

Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify deficiencies and significant proposal weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7. There is no requirement, however, that discussions be all encompassing or extremely specific in describing the extent of the agency's concerns; rather, agencies need only lead offerors into the areas of their proposals that require amplification. Professional Performance Dev. Group, Inc., B-279561.2, et al., July 6, 1998, 99-2 CPD ¶ 29 at 5.

The protester's discussions challenge is without merit. First, the agency was not even required to conduct price discussions here. In this regard, where an offeror's price is not so high as to be unreasonable and thus unacceptable for award, the agency is not required to advise the offeror during discussions that its prices are considered high. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 6. There is no indication in the record that the Army considered Karrar's prices to be unreasonably high; it therefore was not required to question Karrar's pricing during discussions. In any case, the price discussions the agency nevertheless provided were meaningful. The agency's request that Karrar confirm that its prices were based on the historical data in the RFP was sufficient, we think, to reasonably indicate both that the agency believed the firm's prices were high, and that this might be because its prices were not based on the historical data. This question clearly conveyed the nature of the agency's concern, and thus was sufficient to lead Karrar into the area of its proposal that it needed to address. Indeed, Karrar's response--that its prices were in fact based on the historical data--indicates that it fully understood the nature of the agency's concern.

OCI

Karrar asserts that the agency improperly failed to consider that BANC3 has an impermissible OCI due to the fact that it is a subcontractor to, and has a mentor-protégé agreement with, Lockheed Martin Corporation, one of the eight prime contractors for the R2 program. Karrar's assertion is based on its claim that BANC3's Internet website references the mentor-protégé relationship.

The situations in which OCIs arise are addressed in Federal Acquisition Regulation (FAR) subpart 9.5 and in decisions of our Office. As relevant here, one type of OCI, which reflects concerns about a firm's "impaired objectivity," consists of situations where a firm's work under one federal contract could entail its evaluating its own or a related entity's performance under another federal contract, thus undermining the firm's ability to render impartial advice to the government. FAR § 9.505-3; Aetna Gov't. Health Plans, Inc.: Found. Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 13.

The responsibility for determining whether an OCI exists, and the extent to which a firm should be excluded from the competition, rests with the contracting agency, SRS Techs., B-258170.3, Feb. 21, 1995, 95-1 CPD ¶ 95 at 8-9. Where an agency has given thorough, documented consideration to an offeror's activities and their potential to create OCIs, we will not substitute our judgment for the agency's conclusions drawn from such a comprehensive review, provided the conclusions are otherwise rational and reasonable. See, e.g., Business Consulting Assocs., B-299758.2, Aug. 1, 2007, 2007 CPD ¶ 134 at 9-10; Overlook Sys. Techs., Inc., B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185 at 10-18; Alion Sci. & Tech. Corp., B-297022.4, B-297022.5, Sept. 26, 2006, 2006 CPD ¶ 146 at 5-8.

The Army reports that it was aware of the potential OCI here--the possibility that BANC3's relationship with Lockheed would undermine its ability to render impartial advice to the agency under the contract--because BANC3 was performing in the R2 project office as a subcontractor under a task order issued to Lockheed, which was to expire in August 2007, but was extended to October 31. AR at 10. The Army determined that, if BANC3 were awarded the contract, it would have an impermissible OCI if it continued to work with Lockheed or any other R2 prime contractor. Accordingly, on Oct. 15, after BANC3 received the award, the Army met with the firm to discuss its transition plans. At this meeting, BANC3 indicated that it was withdrawing from all teaming arrangements with R2 prime contractors and would not compete as a prime contractor or subcontractor for any future R2 contract. BANC3 further indicated that it would not have any contractual relationship with Lockheed after the current work order expired on October 31. The Army concluded that, since any services that could result in an OCI issue would not be ordered until after the relationship between Lockheed and BANC3 ended, no impermissible OCI existed. As for the alleged mentor-protégé agreement between BANC3 and Lockheed, the Army and BANC3 state that there is not and never has been such an agreement. BANC3 explains that the statement on its website was included in a draft version of its company brochure because it explored the possibility of such an agreement, but the agreement was never completed. The protester has provided no evidence to the contrary. We find that, after thoroughly and reasonably considering the possibility of an OCI, the agency reasonably concluded that there existed no OCI that precluded BANC3 from participating in the procurement or from receiving the award. This argument thus provides no basis for questioning the award.

ABANDONED ISSUES

In its initial and supplemental protests, Karrar challenged the evaluation of its proposal under the technical and management factors on several grounds: its proposal should have been rated outstanding under the technical factor and subfactors; its proposal should have received evaluation credit for providing flow charts; the evaluators erroneously found that Karrar failed to notice an error on a sample form for the budget sample task; its proposal should have been rated

outstanding or good, rather than acceptable, under the management factor; its proposal should have been accorded a strength for avoiding potential OCIs and for its willingness to satisfy the agency's desire for a corporate partnering agreement; and that its proposal should have been accorded significant strengths for its extensive discussion of its approach to supporting R2 personnel requirements, and for its discussion of the role of its facility manager in coordinating the preparation for the R2 office relocation.

In its report in response to the protest, the Army conceded one minor error in the evaluation, but refuted the remainder of the allegations, specifically explaining the basis for Karrar's proposal ratings, as well as the reasons why its proposal was not assigned the strengths Karrar argued should have been assigned. In its comments in response to the agency report, Karrar did not dispute the agency's explanation of the basis for the technical and management evaluations. Accordingly, we consider these issues abandoned and will not consider them.[2] See Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151.[3]

The protest is denied.

Gary L. Kepplinger
General Counsel

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[2]Karrar also abandoned its arguments that BANC3 had an OCI due to its relationship with a second R2 prime contractor; that BANC3 had access to information that provided it with a competitive advantage; and that the agency failed to hold meaningful discussions with Karrar with respect to its technical proposal.

[3] Karrar has filed a supplemental protest in which it further challenges the evaluation of its proposal and argues that the agency did not treat offerors equally. We are developing the record in that protest and will address these arguments in a separate decision.