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Decision

Matter of: Universal Strategy Group, Inc.

File: B-409130

Date: January 27, 2014

Jeffrey Weinstein, Esq., The Weinstein Law Group, PLLC, for the protester.
David F. Barton, Esq., and Elizabeth Haws Connally, Esq., Gardner Law, for Alpha Terra Engineering, Inc., the intervenor.
Robert M. Sundberg, Esq., Department of the Army, for the agency.
Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's evaluation of the protester's technical proposal is sustained where record shows that the evaluation and source selection decision were based upon factual errors.

DECISION

Universal Strategy Group, Inc. (USGI), of Franklin, Tennessee, protests the award of a contract to Alpha Terra Engineering, Inc., of San Antonio, Texas under request for proposals (RFP) No. W912HQ-13-R-0001, issued by the Department of the Army, Corps of Engineers, for various training services supporting the Joint Construction Management System (JCMS). USGI challenges the agency's technical evaluation and selection decision.

We sustain the protest.

BACKGROUND

The Army currently uses the Army Facilities Component System (AFCS) for, among other things, theater of operation development planning, facility construction, and construction material acquisition. The Corps is responsible for transitioning to the Army's new JCMS, which in broad terms, is intended to provide the Department of Defense (DoD) with a single system for planning and executing construction in a more efficient and effective manner. RFP, Performance Work Statement (PWS), at 26.

This procurement is to obtain services supporting the development of instructional courses to educate DoD departments and the Joint Engineer Community on aspects of AFCS and its transition to JCMS. The RFP, issued as a service-disabled, veteran-owned, small business set-aside, provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base year and two option years, under which task orders would be written for such things as research reports, software development, and training courses or materials. Id. at 27-28. Offerors were informed that courses would be both instructor-led and distance learning courses. Id. at 27. The RFP provided that training modules for distributed learning should be based upon the Shareable Content Object Reference Model (SCORM).¹ Id.

Offerors were informed that award would be made on a best-value basis, considering the following factors and subfactors, in descending order of importance:

Technical Approach	
	Effectiveness of approach for developing interactive distributed learning courseware
	Effectiveness of approach for updating/developing instructor-led courseware
	Effectiveness of approach in achieving contract objectives
Personnel	
	Experience
	Education/certifications
Organization, Management, Structures, and Capabilities (OMSC) Plan	
	Effectiveness of plan in accomplishing PWS tasks
	Effectiveness of quality control plan and corrective measures
Past Performance	
Price	

¹ SCORM is a set of technical standards for web-based learning system software products, which allows interoperability, accessibility, and reusability of web-based learning content for private industry and government end users, and assists programmers to write code that is industry-wide compliant. See <http://scorm.com/scorm-explained>.

RFP amend. 1, at 10-11. The RFP also provided that the non-price factors, combined, were significantly more important than price. Id. at 10.

The RFP stated that offerors' proposals would be adjectivally rated under the non-price factors. Specifically, the RFP provided that proposals would be evaluated under the technical approach, personnel, and OMSC plan factors as outstanding, good, acceptable, marginal, or unacceptable. Offerors were also informed that their technical solutions would be assessed for performance risk. Id. at 11. Past performance was to be evaluated as very relevant, relevant, somewhat relevant, or not relevant; and would receive a confidence assessment of substantial, satisfactory, limited, no confidence, or unknown confidence (a neutral rating). Id. at 11-12.

Detailed instructions were provided for the preparation of proposals. For example, with respect to the personnel factor, offerors were instructed to discuss personnel proposed to perform the PWS tasks and to describe each person's role. In this regard, offerors were required to submit resumes that, at a minimum, discuss each person's education/certifications and work experience relevant to the PWS tasks. RFP amend. 1, at 9. With respect to the OMSC plan factor, offerors were instructed to describe their organization, including identifying responsibilities of personnel and subcontractors. Id. With respect to past performance, offerors were instructed to provide up to five relevant contracts performed within the last five years. Id. The RFP provided that the agency may consider any information provided by the offeror and any government contacts, and requested that offerors "have their previous customers submit completed Past Performance Questionnaires" Id.

The Corps received seven proposals, which were evaluated by the agency's source selection evaluation board (SSEB). The SSEB prepared a consensus evaluation report identifying strengths, weaknesses, deficiencies and overall technical ratings under each factor and subfactor. USGI's proposal received the following overall factor and risk ratings:

	Rating	Risk
Technical Approach	Good	Low
Personnel	Outstanding	Low
OMSC Plan	Good	Low
Past Performance	Satisfactory Confidence/Relevant	

See Agency Report (AR), Tab 11, Pre-Negotiation Memorandum, at 10-11, 21. USGI's adjectival rating reflected the SSEB's judgment that USGI's technical proposal had a number of strengths and weaknesses, and that the strengths outweighed the identified weaknesses. Generally, the assessed weaknesses

concerned a lack of significant detail or specifics about how USGI's process would apply to the PWS work. Id. at 23.

The contracting officer decided to conduct discussions, and established a competitive range that included the proposals of seven offerors, including USGI's and Alpha Terra's. AR at 1-2; Tab, 17, Source Selection Decision, at 1. As relevant here, USGI was requested to (1) provide a more thorough description of how it intended to develop distributed learning courseware; (2) describe how it would achieve SCORM compliance; (3) provide a more specific workflow process for distributed learning development; (4) provide more specifics with respect to its program and project management in its OMSC plan and identify personnel by name; (5) provide more recent relevant past performance experience; (6) provide more details with respect to its quality assurance and quality control plans; and (7) review its price. See AR, Tab 12, USGI Revised Proposal Transmittal Letter, at 1.

USGI responded to the agency's discussion requests in a 33-page revision to its proposal. Id., at 1-33. With respect to the agency's request that it more specifically explain its workflow process for developing the distributed learning courseware, the protester provided a workflow diagram to show in graphic form the process that USGI would follow to take [deleted] from the development stage through final review and delivery to the government.² See id. at 1-2. This was followed by a work breakdown structure table describing [deleted]. Id. at 2-3. Another table described [deleted] for various course components (such as lesson objectives, instructional content, and interactive activities). Id. at 4-5. USGI also provided narrative discussion with respect to its use of SCORM, stating in part that "[o]n previous efforts, Team USGI used SCORM 2004 sequencing rules, setting of objectives, completion, and status information, to develop [deleted]." Id. at 9.

With respect to its OMSC plan, USGI addressed its plans for quality control, quality assurance, and continuous process improvement. See id. at 19-27. In particular, its discussion of its proposed quality control plan included the identification by name of personnel and their responsibilities under the plan. Id. at 19. With respect to past performance, USGI identified four additional examples of its past performance, all of which were performed within the past three years. See id. at 27.

The SSEB found that, although USGI's proposal provided some further information and explanation, this additional information did not warrant an increase in its overall factor ratings. For example, with respect to the evaluation of USGI's revised proposal under the technical approach factor (for which it received a good rating),

² The workflow diagram identified [deleted] as a necessary step in USGI's process for developing distributed learning courseware. AR, Tab 12, USGI Revised Proposal, at 2.

the SSEB noted that USGI failed to provide detailed information tailored to the particular effort here, but instead provided cursory discussions that demonstrated a “standard approach.” Although the SSEB recognized that USGI had provided some “strong examples” of its courseware, the evaluators found that this was not sufficient to warrant a higher (that is, outstanding) adjectival rating under this factor. AR, Tab 15, SSEB Final Evaluation Report, at 18-19. With respect to the protester’s OMSC plan, the SSEB noted as a weakness that “USGI did not provide by-name assignments.” Id. at 20. With respect to USGI’s past performance, the SSEB recognized that USGI had provided examples of more recent past performance but found that this did not result in a higher past performance rating. Id. at 21.

The four highest-rated revised proposals were evaluated as follows:³

	Technical Approach	Personnel	OMSC Plan	Price
Alpha Terra	Outstanding	Outstanding	Outstanding	\$3.1 million
Offeror A	Outstanding	Outstanding	Outstanding	\$2.8 million
Offeror B	Outstanding	Good	Outstanding	\$2.3 million
USGI	Good	Outstanding	Good	\$2.5 million

AR, Tab 17, Source Selection Decision, at 3.

The agency’s source selection authority (SSA) accepted the SSEB’s technical and price evaluations in her comparison of the adjectival ratings and merits of the offerors’ respective proposals under each of the evaluation factors. Thus, as relevant here under the technical approach factor, the SSA recognized that Alpha Terra’s proposal was evaluated as outstanding, while USGI’s proposal was evaluated as good. The SSA found that Alpha Terra provided a better explanation of its technical approach and demonstrated superior understanding of the requirements. In this regard, the SSA noted that, although USGI’s revised proposal provided a reasonable explanation of distributive learning development, its technical approach was generic and not specifically tailored to show how it would “apply the process to the JCMS effort,” and included generic standard items inapplicable to the requirements. Id. at 4-5.

³ All of the competitive range offerors’ revised proposals received satisfactory confidence/relevant ratings under the past performance factor. See AR, Tab 17, Source Selection Decision, at 3.

With respect to evaluation of Alpha Terra's and USGI's proposals under the personnel factor, the SSA recognized that both firms' proposals were evaluated as outstanding. Nevertheless, the SSA noted as a discriminator that USGI "did not present personnel that had [deleted] and cannot be considered as valuable an offeror for this Evaluation Factor." Id. at 6. With respect to the OMSC plan factor, the SSA found that Alpha Terra's higher (outstanding) rating, as compared to USGI's good rating, reflected technical superiority. In this regard, the SSA noted that USGI's proposal "lacked specifics on personnel assignments" Id. at 7. With respect to the past performance factor, the SSA recognized that both firms had received satisfactory confidence/relevant ratings. Id. at 9.

The SSA concluded that Alpha Terra's proposal reflected the best value to the agency, stating that Alpha Terra

truly understood the requirements, prepared a superior proposal consisting of a highly qualified team with exceptional experience in [deleted] to effectively manage the complex requirement of developing training materials to meet each of the Services' unique needs for transitioning from AFCS to JCMS.

Id. at 10.

Award was made to Alpha Terra, and this protest followed a debriefing.

DISCUSSION

USGI protests that the Corps evaluated its proposal unreasonably and otherwise failed to consider the firm's proposal revisions in response to discussions. In particular, the protester complains that the SSEB and SSA identified discriminators that were factually incorrect, or were inconsistent with USGI's revised proposal.⁴

The evaluation of an offeror's proposal is a matter within the agency's discretion. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest of an agency's evaluation of proposals and source selection decision, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable

⁴ USGI also challenged the agency's evaluation of its proposal under the technical approach and past performance factors. We find from our review of the record that the protester's arguments provide no basis to question the agency's evaluation of USGI's proposal under these factors.

procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5.

Here, the record supports USGI's contention that the agency's evaluation of USGI's revised proposal and source selection decision was based upon factual errors in two regards. First, with respect to the evaluation of USGI's proposal under the personnel factor, the SSA recognized that both USGI's and Alpha Terra's revised proposals received the same outstanding evaluation rating. Nevertheless, the SSA found that USGI's proposal was of less value than Alpha Terra's, based upon the SSA's conclusion that "USGI did not present [deleted], and cannot be considered as valuable an offeror for this Evaluation Factor." See AR, Tab 17, Source Selection Decision, at 6. This conclusion was in error, however.⁵ As noted by the protester, USGI's proposal included resumes for staff with specific AFCS experience, see AR, Tab 6, USGI Initial Technical Proposal, at annex C, at 1-5, and USGI's revised proposal reminded the agency that "[m]embers of Team USGI developed the current version of the [deleted]." See AR, Tab 12, USGI's Revised Proposal, at 17. Moreover in this regard, both USGI and Alpha Terra proposed the same individual for [deleted].⁶ See AR, Tab 6, USGI Initial Technical Proposal, at annex C, at 4-5; see also AR, Tab 7, Alpha Terra's Proposal, at 7, 8-9.

Second, with respect to the evaluation of USGI's revised proposal under the OMSC plan factor, the SSEB found that, despite the agency's specific request during discussions, USGI "did not provide by-name assignments." See AR, Tab 15, SSEB Final Evaluation Report, at 20. Based upon this finding, the SSA concluded that "USGI[']s proposal] lacked specifics on personnel assignments that detracted from their OMSC plan." See AR, Tab 17, Source Selection Decision, at 7. These conclusions are also in error. The record here shows that, in response to discussions, USGI provided additional information concerning its OMSC plan, including identifying by name the personnel it proposed for this plan and their responsibilities. See AR, Tab 12, USGI Revised Proposal, at 19.

⁵ The record does not explain the basis of the SSA's conclusion, given that a lack of specific AFCS experience was not identified by the SSEB or raised during discussions with the protester.

⁶ USGI also complains that the person proposed by both USGI and Apha Terra as its [deleted] signed an exclusive employment agreement with USGI, and therefore was not permitted to work for Alpha Terra under this contract. To the extent USGI is complaining that this individual and Alpha Terra are violating an employment agreement, this is a private dispute that our Office does not review.

In short, the documents in the record here lead our Office to agree that the discriminators identified by the SSEB and the SSA were based on factual errors. There is no explanation in the record supporting the agency's conclusions on either of these issues, nor has the agency offered any rebuttal to the protester's assertion of these errors. While we do not express an opinion as to the adjectival ratings assigned to USGI's revised proposal, we agree with the protester that the record here does not support the agency's evaluation conclusions regarding USGI's revised proposal. Because of these errors, we do not know, and will not speculate, how a reasonable evaluation of USGI's proposal would have affected the agency's best-value source selection decision. In such circumstances, we resolve any doubts regarding prejudice in favor of a protester, since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest.⁷ See Kellogg, Brown & Root Servs., Inc.—Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. Accordingly, we conclude that USGI was competitively prejudiced by the agency's errors.

RECOMMENDATION

We recommend the Corps reevaluate proposals and make a new selection decision. If another firm's proposal is found to offer the best value to the government, the agency should terminate Alpha Terra's contract for the convenience of the government and make award to the other offeror. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2013). The protester's certified claims 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. 4 C.F.R. §21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel

⁷ The agency contends that USGI would not have had a substantial chance of receiving the award despite these errors, because there were two other offerors with higher technical ratings than USGI. We have no basis in this record to reach such a conclusion. A reasonable possibility exists that USGI's proposal, when fairly considered, could be found to offer the best value of any of these proposals.