



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: JAVIS Automation & Engineering, Inc.

File: B-293235.6

Date: April 29, 2004

John W. Long for the protester.

Mark Langstein, Esq., Terry Hart Lee, Esq., and Lauren Kalish, Esq., Department of Commerce, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of proposal from competitive range is denied where agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

JAVIS Automation & Engineering, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. CM1301-03-RP-0019, issued as a total small business set-aside by the Department of Commerce for information technology (IT) services. JAVIS asserts that the evaluation of its proposal was inconsistent with the evaluation scheme set forth in the RFP and was otherwise unreasonable.

We deny the protest.

This protest concerns the Phase I competition for Tier I offerors in the Commerce Information Technology Solutions Next Generation (COMMITTS NexGen) procurement.¹ Issued on August 18, 2003, and amended several times, the RFP

¹ Phase I is a down-select process in which the agency selects the offerors that will proceed to the next phase of the competition by establishing a competitive range. RFP amend. 5, § L.11.1, at 64-65.

contemplates the award of multiple indefinite-delivery, indefinite-quantity task order contracts with a 5-year ordering period. RFP amend. 6, § B.3, at 2. The RFP provided for a three-tier classification system for the submission and evaluation of offerors' proposals as well as for task order competition among the ultimate contract awardees.² The RFP provided that the COMMITS NexGen procurement may encompass several competitive range determinations in accordance with Federal Acquisition Regulation (FAR) § 15.306(c)(2), RFP amend. 6, Cover Letter, at 1, and advised offerors that the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition. RFP § L.2(f)(4), at 59.

Under Phase I, offerors were to respond to a series of technical questions (referred to in the solicitation as the "down-select questions"); the number of questions to which each offeror was required to respond was determined by its size. Tier I firms were required to respond to any four of ten technical questions. RFP amend. 6, § L.11.2.1, at 65. Offerors also were required to complete a pricing matrix and provide labor rates on both an hourly and annual basis for the specified labor categories. RFP attach. J-6, Pricing Matrix; RFP amend. 6, § L.11.2.1.2, at 65a. The RFP advised that the purpose of the pricing matrix was to allow the agency to compare pricing among all offerors and further advised that all proposed labor rates must have been negotiated on a prior government procurement within a year of the response to this solicitation. RFP amend. 6, § L.11.2.1.2, at 65a.

The Phase I down-select responses were to be evaluated on the basis of the following factors: quality (denominated as past performance);³ experience/technical

² The tiers are defined by a firm's annual level of revenue and the associated North American Industrial Classification System (NAICS) code under which they qualified. RFP amend. 3, § C.2, at 6. As relevant here, Tier I firms have an annual revenue between \$6 million and \$12.5 million, and these firms will be allowed to compete for IT task orders with a life-cycle value not to exceed \$5 million. *Id.* at 5.

³ As relevant here, for the quality factor, the adjectival ratings and accompanying definitions were identified as: (1) blue, reflecting "essentially no doubt" that the offeror will successfully perform; (2) green, reflecting "slight concerns" about the offeror's ability to successfully perform but where the overall risk level was good; and (3) yellow, reflecting "reasonable doubt" that the offeror will successfully perform. Contracting Officer's Statement at 4.

capability (denominated as overall experience);⁴ and price.⁵ The RFP further provided that the quality and experience/technical capability factors were of equal importance and that each was more important than price. RFP amend. 6, § M.4, at 74. With regard to the price evaluation, section M stated that price proposals would be evaluated for realism and reasonableness and would be examined to determine if they deviated above or below what was expected. The solicitation further stated that a designated sample of proposed rates would be compared against those of other offerors to determine if they were reasonable. RFP amend. 6, § M.4.3, at 74.

The agency received numerous Tier I proposals, including JAVIS's, by the solicitation's extended closing date. Under the quality factor, the agency evaluators assigned JAVIS's proposal the highest possible rating of blue. Under the experience/technical capability factor, the evaluators assigned JAVIS's proposal the second highest possible overall rating of green based on the firm's four responses to the down-select questions. Specifically, the evaluators rated the protester's response to down-select question No. 1 only as green because the protester did not, as required by this down-select question, adequately highlight its experience in the production to operations and maintenance phases in moving software design projects through the entire system life cycle. JAVIS's response to down-select question No. 3 was rated yellow because the protester did not describe or otherwise provide detailed information regarding its experience with the X-windows operating system or with the Linux operating system. As to down-select question No. 6, JAVIS received a rating of only green for its response because the protester did not furnish adequate information concerning its IT security certifications. For its response to down-select question No. 8, which received a rating of green, the evaluators noted that JAVIS did not provide sufficient information concerning its experience in the identification of IT security inconsistencies between lower-level policy documents and regulatory requirements. Agency Report (AR) exh. 18, JAVIS Debriefing Materials, at 8-15.

With respect to price, JAVIS's proposed prices were determined to be reasonable and realistic and the evaluators assigned a rating of green to JAVIS's proposal

⁴ Under the experience/technical capability factor a rating of blue meant that the offeror has "comprehensive experience" and "exceptional" technical capabilities to perform the work. A green rating meant the offeror has "overall good experience and capabilities" to perform. Contracting Officer's Statement at 4.

⁵ As to price, a blue rating meant prices were "realistic" and compared "very favorably" with other offerors within a tier by being at least 11 percent below the average; a rating of green meant that prices were "realistic" and compared "favorably" with others by being within 10 percent of the average annual rates. Contracting Officer's Statement at 3.

because, under a pricing model developed by the agency, the firm's annual labor rate was within 10 percent of the average annual rate. *Id.* at 17-18. On this basis, JAVIS's proposal was evaluated as green overall. Contracting Officer's Statement at 3-6; AR exh. 14, Redacted Phase I Ratings for Tier I Offerors, at 5.

Based on the results of the initial evaluation, the contracting officer recommended to the source selection authority (SSA) that only those offerors whose proposals received an overall rating of blue should proceed to Phase II of the competition because offerors with an overall blue rating were substantially stronger in areas necessary to meet Commerce's requirements. Contracting Officer's Statement at 6. The contracting officer determined that limiting the competitive range only to those offerors with an overall blue rating left an adequate amount of competition within each tier and that limiting the competitive range would allow the agency to make fair, timely, and efficient evaluations of the remaining offerors' submissions. Of relevance here, the record shows that only those proposals that received a blue rating for both the quality and the experience/technical capability factors were determined to be the "most highly rated" and were included in the competitive range.⁶ AR exh. 15, Redacted Phase I Ratings for Tier I Competitive Range Offerors. Since JAVIS's proposal was rated green overall, it was excluded from the competitive range. The SSA concurred with the contracting officer's recommendation.

By e-mail dated October 31, the contracting officer notified the protester that its proposal had not been included in the competitive range because it was not among the highest rated. The e-mail noted that only those firms whose proposals were the highest rated were included in the competitive range and invited to participate in Phase II of the competition. AR exh. 16, Contracting Officer's E-mail to the Protester (Oct. 31, 2003). After requesting and receiving a preaward debriefing on December 11, JAVIS filed an agency-level protest on December 16, alleging various improprieties in the agency's evaluation. AR exh. 19, Letter from Protester to Contracting Officer (Dec. 16, 2003). The contracting officer denied JAVIS's protest by letter dated January 14, 2004, and JAVIS subsequently filed this protest in our Office on January 22.

JAVIS objects to the exclusion of its proposal from the competitive range, arguing that the agency failed to evaluate the protester's proposal in accordance with the stated solicitation factors.⁷ We disagree.

⁶ The record shows that firms did not need a blue rating under the price factor to have their proposals included in the competitive range.

⁷ Throughout its protest, JAVIS incorrectly alleges that the agency evaluated its proposal as technically unacceptable. Similarly, the protester incorrectly maintains that the RFP required the agency to conduct a cost-realism analysis.

After evaluating all proposals, agencies may establish a competitive range if discussions are to be conducted. Based on the ratings of each proposal against all evaluation criteria, the contracting officer is to establish a competitive range comprised of the most highly rated proposals, unless the competitive range is further reduced for purposes of efficiency pursuant to FAR §15.306(c)(2). That provision permits the contracting officer to limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition provided that the solicitation notifies offerors that this may be done. FAR §15.306 (c)(2); RFP § L.2(f)(4), at 59. In reviewing an agency's evaluation and its competitive range determination, our Office will not reevaluate the proposals; instead, we will examine the record to ensure that the evaluation was reasonable and in accordance with the solicitation's evaluation criteria and applicable statutes and regulations. Computer & Hi-Tech Mgmt., Inc., B-293235.4, Mar. 2, 2004, 2004 CPD ¶ ___ at 6. The protester's mere disagreement with the agency's judgment does not establish that it was unreasonable. Id. We have reviewed the record and conclude that the evaluation of JAVIS's proposal was reasonable and consistent with the solicitation, and that it was reasonably excluded from the competitive range.⁸

In its protest as well as its comments on the agency's report, JAVIS does not dispute the ratings assigned to its responses to the down-select questions which resulted in an overall rating of green under the experience/technical capability factor. Rather, JAVIS maintains that, since its proposal received one blue rating (for quality) and one green rating (for experience/technical capability), and the quality and experience/ technical capability factors were of equal value, its proposal should have been assigned an overall rating of blue under these non-price factors. In addition, JAVIS believes that it was entitled to a blue rating under the price evaluation factor because its prices were determined reasonable and realistic. Protest at 4-8, Protester's Comments at 6. JAVIS thus asserts that its proposal should have been rated blue overall and included in the competitive range.

JAVIS provides no meaningful support for its argument. JAVIS's proposal was rated green under the experience/technical capability factor and JAVIS does not contest the agency's underlying ratings for this factor. Based on our review of the record, JAVIS's proposal reasonably was evaluated as green under the experience/technical capability factor, and the weighting scheme in the RFP did not require the evaluators to assign an overall rating of blue where a proposal was rated blue under one non-price factor and green under the other simply because these non-price factors were of equal value. We therefore have no basis to question the overall green rating assigned to JAVIS's proposal.

⁸ Notwithstanding JAVIS's arguments to the contrary, because the proposal was reasonably excluded from the competitive range, no discussions with JAVIS were required. FAR § 15.306; SOS Interpreting, Ltd., B-287505, June 12, 2001, 2001 CPD ¶ 104 at 12.

The protester also argues that its price proposal should have received a blue rating under the price evaluation factor because the agency determined that its proposed prices were both realistic and reasonable. Protester's Comments at 6. As the agency points out, and as discussed above, the solicitation also called for the agency to conduct a price comparison among offerors and to evaluate the extent to which each offeror's proposed prices deviated above or below what was expected. Based on this price evaluation, JAVIS's price proposal was rated green because its annual labor rate was within 10 percent of the average annual rates and not so much lower as to earn a blue rating. JAVIS again provides no basis for us to question the price evaluation, which was conducted consistent with the RFP language, or the price factor rating of green assigned to JAVIS.

As noted above, the solicitation permitted the agency to limit the number of proposals in the competitive range to the greatest number that would permit an efficient competition. Although JAVIS submitted an acceptable proposal, its evaluation ratings were lower than those of the proposals included in the competitive range; the agency reasonably determined that a competitive range consisting of those higher-rated proposals was the largest number that could be permitted and still allow an efficient competition. In sum, we conclude that the agency reasonably excluded JAVIS's proposal from the competitive range.

The protest is denied.

Anthony H. Gamboa
General Counsel