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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Coastal Environments, Inc.

File: B-401889

Date: December 18, 2009

Sherwood M. Gagliano, for the protester.

Ralph C. Thomas III, Esq., Barton Baker Thomas & Tolle, LLP for Ecological Communications Corporation, the intervenor.

P. Alex Petty, Esq., Department of the Army, Corps of Engineers, 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 sustained where the record shows that, in making an award on initial proposals, the agency conducted a tradeoff between the two highest-rated, highest-priced proposals, but did not consider in its tradeoff decision the lower prices offered by other lower-rated offerors, whose proposals were nonetheless rated technically acceptable and assessed as low risk.

DECISION

Coastal Environments, Inc. of Baton Rouge, Louisiana protests the award of a contract to Ecological Communications Corporation (ECC) of Austin, Texas, under request for proposals (RFP) No. W912HY-09-R-0008, issued by the Department of the Army, Army Corps of Engineers, for support services. Coastal challenges the agency's evaluation of proposals and decision to make award to ECC, which received an overall higher rating under the nonprice factors and offered a higher price than the protester.

We sustain the protest.

BACKGROUND

Issued as a small business set-aside, the RFP sought proposals to provide professional marine, terrestrial, and historic cultural resource investigation services in the Texas and Louisiana areas, as well as coordination of these investigations with Native American tribes. The RFP anticipated award of a single fixed-price indefinite-

delivery, indefinite-quantity (ID/IQ) task order contract for a 1-year base performance period and four 1-year option periods.

The RFP identified the following six evaluation factors in descending order of importance: (1) personnel and company qualifications, (2) management capability, (3) technical excellence, (4) past performance, (5) small business participation, and (6) price; the RFP also identified several subfactors under the non-price evaluation factors. RFP § M at 3-4. Award was to be made to the responsible offeror whose proposal was determined to represent the “best value” to the government, all factors considered. Id. at 1.

Eight proposals were received and evaluated using the adjectival rating system set forth in the RFP for the nonprice factors and subfactors. These ratings were: excellent, good, acceptable, marginal, poor, unacceptable, and—with regard to the past performance factor—neutral. Id. at 3. In addition, the agency performed a risk assessment of each proposal, assigning risk ratings of low, moderate, or high risk. Agency Report (AR) exh. 15, Revised Source Selection Authority (SSA) Decision at 1, 8-9. The agency also calculated a total evaluated price for each offeror using the proposed “unit” rates for 1 day of time for each labor category, 1 day of use for different types of equipment, 1 page of report production, and 1 page of historic document or photographic reproduction.¹ RFP § B at 3-13.

The overall consensus adjectival ratings, risk ratings, and evaluated prices are set forth below:

Offerors	Overall Rating	Overall Risk	Evaluated Price
ECC	Good	Low Risk	\$94,705.72
Offeror A	Good	Low Risk	\$91,721.82
Offeror B	Marginal	High Risk	\$88,747.12
Offeror C	Acceptable	Low Risk	\$88,274.00
Offeror D	Marginal	High Risk	\$86,375.74
Offeror E	Marginal	High Risk	\$85,456.74
Coastal	Acceptable	Low Risk	\$77,271.28
Offeror F	Acceptable	Moderate Risk	\$66,535.87

¹ We recognize that this methodology for computing the evaluated price provides limited, if any, insight into the actual price an awardee may charge for the task orders to be awarded here, especially since the methodology does not address relative differences in approach among the offerors. While we did not see an estimated value of this procurement in the record, there is no dispute it will be much higher than the evaluated price here; the contract’s maximum value is \$11.5 million. Contracting Officer’s Statement at 2. That said, none of the competitors challenged the solicitation’s stated terms prior to the closing time for receipt of proposals.

Agency Report (AR) exh. 15, Revised Source Selection Authority (SSA) Decision, at 1, 8-9.

The contracting officer, as the SSA, reviewed the evaluation findings and performed a price/technical tradeoff between the two most highly rated proposals; *i.e.*, those of ECC and Offeror A. Specifically, the SSA selected ECC for award after concluding that “due to the highly specialized nature of the work...ECC’s technical superiority” justified paying an additional \$2,984 to ECC. *Id.*, at 10. After learning of the selection decision and receiving a debriefing, Coastal filed this protest.

DISCUSSION

Coastal raised several different challenges to the agency’s evaluation of proposals, and alleged that award to ECC was inconsistent with the stated evaluation factors. In response to the protest, the Corps filed a request for summary dismissal, which we granted in part, and denied in part.

As a preliminary matter, we dismissed Coastal’s untimely allegation that the Corps failed to use appropriate and required selection factors to evaluate proposals because this post-award allegation involves a solicitation impropriety; accordingly, this basis of protest had to be raised prior to the closing date for receipt of proposals. We also dismissed as untimely Coastal’s allegations that (1) ECC will improperly subcontract the majority of the solicited services to a large business; (2) ECC cannot perform the work with at least 50 percent of its own personnel; (3) ECC does not have relevant past performance and should not have been rated “excellent” under this factor; and (4) that the Corps provided improper award notification to the protester.²

Nonetheless, despite the agency’s objections, we declined to dismiss the following issues raised by Coastal: (1) whether the alleged use of “innovation” as a sub-criteria in the evaluation of technical excellence was appropriate; (2) whether the agency used arbitrary requirements to evaluate proposals under the management capability factor; and (3) whether the Corps performed an unreasonable best value determination.

² These issues were dismissed as untimely because Coastal was clearly aware of them more than 10 days before it filed its protest here. In fact, Coastal expressly complained about each of these matters in its August 20, 2009 letter to the contracting officer requesting a debriefing. As a result, the protester could not wait until 10 days after receiving its debriefing (which was not timely requested) to raise these issues.

With respect to its two challenges to the technical evaluation, Coastal essentially alleges that an unstated evaluation sub-factor, *i.e.*, “innovation,” was used by the evaluators in their assessments under the technical excellence evaluation factor, and that the “specifications” used to evaluate proposals under the management capability factor were restrictive and arbitrary. In reviewing protests of alleged improper evaluations, it is not our role to reevaluate proposals. Rather, we will review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and with procurement statutes and regulations. Matrix Gen., Inc., B-282192, June 10, 1999, 99-1 CPD ¶ 108 at 3. Although Coastal pursued its protest *pro se*, and thus was not able to review all of the evaluation materials, we have reviewed them and we see no support in the contemporaneous evaluation record for either of these contentions. In fact, our review of the record here has revealed nothing to lead us to conclude that the agency’s technical evaluation findings and conclusions were unreasonable or otherwise improper.

With respect to Coastal’s challenge that the agency failed to perform a proper best value determination, however, we sustain the protest. In this regard, the protester argues that the agency did not consider the significant price advantage associated with its technically acceptable, low risk proposal. Based on our review of the selection decision, we agree.

In a “best value” procurement, it is the function of the source selection authority to perform a tradeoff between price and non-price factors, that is, to determine whether one proposal’s superiority under the non-price factor is worth a higher price. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its selection decision. e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. Specifically, before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explaining why its technical superiority warrants paying a price premium. ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7.

Here, the record shows that the SSA impermissibly limited her price/technical tradeoff analysis to a comparison of the two highest-rated, highest-priced proposals without any qualitative assessment of the technical differences between these two proposals and any of the other technically acceptable proposals—such as Coastal’s—to determine whether either of these proposals contained features that would justify the payment of a price premium. In addition, our review shows that the two higher-rated, higher-priced proposals considered in the tradeoff both received overall adjectival ratings of good and low risk, while Coastal’s proposal received the next lowest rating of acceptable and low risk, and is priced approximately 20 percent lower. A proper tradeoff decision must provide a rational explanation of why a proposal’s evaluated technical superiority warrants paying a premium. Federal

Acquisition Regulation § 15.308 (The source selection “documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs.”); See ACCESS, Sys., Inc., supra. Here, the SSA did not identify what benefits in ECC’s proposal warranted paying a premium to ECC when compared to Coastal’s lower-priced proposal which was found to be acceptable and low risk.

RECOMMENDATION

We recommend that the agency perform and document a new price/technical tradeoff analysis. If ECC’s proposal is not found to reflect the best value to the government, the agency should terminate for the convenience of the government ECC’s contract and award to the offeror whose proposal is determined to be the best value to the government. We also recommend that Coastal be reimbursed its costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2009) 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).

Lynn H. Gibson
Acting General Counsel