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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Ridoc Enterprises, Inc./Myers Investigative & Security Services, Inc.

File: B-293045.2

Date: July 26, 2004

Lawrence J. Sklute, Esq., and Nolan Sklute, Esq., Sklute & Associates, for the protester.
Anthony G. Beyer, Esq., and Kenneth A. Redden, Esq., Environmental Protection Agency, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's implementation of voluntary corrective action in response to an earlier protest filed with the Government Accountability Office is sustained where the agency failed to conduct discussions with all of the offerors whose proposals the contracting officer determined to be in the competitive range.

DECISION

Ridoc Enterprises, Inc./Myers Investigative & Security Services, Inc. protests the Environmental Protection Agency's (EPA) award of a contract to Eagle Technologies, Inc. for security guard services at EPA facilities in North Carolina under request for proposals (RFP) No. PR-NC-03-10224. The protester contends that the agency misevaluated Ridoc's proposal and improperly conducted discussions with Eagle without conducting discussions with Ridoc.

We sustain the protest.

The RFP, issued on April 28, 2003, provided for the award of a fixed-price contract for a base year with four 1-year option periods. The solicitation provided for award to the offeror whose proposal was the most advantageous to the government considering price and other factors. The RFP further provided that all of the evaluation factors, other than price, when combined, were significantly more important than price. RFP § M.4.

Seven proposals were received in response to the RFP. A technical evaluation panel (TEP) reviewed and scored the offerors' technical proposals. Based on the TEP's evaluation, the EPA established a competitive range, which consisted of the proposals of three offerors, including Ridoc and Eagle. The EPA conducted discussions with these three offerors. The EPA subsequently requested and received revised proposals from the three offerors. After the revised proposals were evaluated, the TEP increased Eagle's score from [DELETED] points to [DELETED] points; Ridoc's score decreased from its original score of [DELETED] points to [DELETED] points, and the third offeror's (Offeror A) score increased from [DELETED] points to [DELETED] points. The revised price proposals were as follows: Eagle--[DELETED]; Offeror A--[DELETED]; and Ridoc--[DELETED]. Agency Report (AR), Tab bb, Source Selection Document.

The EPA concluded that Ridoc's revised technical proposal was unacceptable. More specifically, the EPA found that Ridoc's revised proposal did not fully address the weaknesses identified during discussions and contained inconsistencies, incomplete information, and statements that reflected a lack of understanding of contract requirements. The contracting officer concluded that only Eagle's proposal should remain in the competitive range. Id.

The EPA had further questions concerning Eagle's revised proposal and decided to conduct another round of discussions with Eagle. After these discussions, which addressed both price and technical issues, the EPA requested a second revised proposal from Eagle, as the only offeror whose proposal was in the competitive range. AR, Tab X, Request for Revised Proposal. In its second revised proposal, Eagle addressed a number of technical issues and reduced its price to [DELETED]. Based on its second revised price proposal, Eagle was now the low-priced offeror (as compared to Offeror A and Ridoc, whose prices are set forth above). The EPA subsequently awarded the contract to Eagle on September 26.

After an October 1, written debriefing, Ridoc filed a protest with our Office objecting to the award and to the agency's evaluation of proposals. By letter dated November 10, the EPA requested that our Office dismiss the protest because the agency had decided to take corrective action. The agency announced that it would reevaluate the revised proposals for the purpose of addressing the inconsistencies in the evaluation identified by the protester. AR, Tab hh, Corrective Action Letter. The agency further stated that upon completion of the reevaluation, the agency's source selection official would redetermine the correctness of having removed the proposals of Offeror A and Ridoc from the competitive range, and if the reevaluation warranted, the agency's source selection official would conduct additional discussions with all offerors whose proposals remained in the competitive range. Id. Our Office subsequently dismissed the protest on November 14.

The EPA convened a new TEP, which reevaluated the revised proposals, including Eagle's second revised proposal. After the new TEP's reevaluation, the technical point scores were as follows: Eagle--[DELETED] points; Offeror A--[DELETED] points; and Ridoc--[DELETED] points.

Based on the reevaluation, the contracting officer determined that all three offerors' proposals should be included in the competitive range. AR, Tab nn, Source Selection Redetermination. The contracting officer also determined that discussions were not necessary since Eagle's proposal received the highest technical score and offered the lowest price. The contracting officer concluded that Eagle's proposal remained the best value, and she upheld the award to Eagle. Id. Ridoc received a written debriefing on April 6, 2004, and filed this protest with our Office on April 16.

The protester argues that the EPA acted improperly by not reopening discussions with Ridoc after the EPA determined that Ridoc's proposal was technically acceptable and was within the competitive range. Ridoc argues that the EPA improperly conducted an additional round of discussions solely with Eagle, which allowed Eagle to materially revise its proposal in terms of addressing technical issues and lowering its price. We agree with Ridoc and conclude that the EPA was obligated in these circumstances to conduct a new round of discussions with all of the offerors whose proposals were included in the competitive range.

The Federal Acquisition Regulation (FAR) provides that, when an agency conducts discussions with one offeror, it must conduct discussions with all offerors whose proposals are determined to be in the competitive range, and it must then allow them to submit revised proposals. FAR §§ 15.306(d)(1), 15.307(b); World Travel Serv., B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6. The EPA's corrective action here--a complete reevaluation of proposals by a new TEP--led to a determination that all three offerors' proposals should have been included in the competitive range. If the agency had not conducted further discussions with any offeror, the agency's corrective action might have been adequate. As explained above, however, the agency, based on the earlier determination that Eagle's proposal was the only one in the competition range, had conducted an additional round of discussions solely with that firm. Once the agency decided to revise the competitive range determination by including two more proposals, the fact that the additional round of discussions had been limited to Eagle had to be addressed as part of the agency's corrective action. Specifically, after the EPA determined that the proposals of Ridoc and Offeror A should have been included in the competitive range, the agency's failure to conduct another round of discussions with those firms and to afford them the same opportunity to submit a second revised proposal as had been afforded to Eagle was inconsistent with the government's obligation to give all offerors whose proposals were in the competitive range the same opportunity to learn about the government's concerns regarding their proposals and to revise those proposals. See Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 5.

The agency argues that Ridoc was not prejudiced by the agency's actions. Agency's Final Brief at 7. We disagree. The agency's earlier determination that only Eagle's proposal should be included in the competitive range was based on the initial TEP's evaluation, which was superseded by the corrective action. The additional round of discussions that, by virtue of that superseded evaluation, was conducted only with Eagle, provided that firm information about the agency's assessment of the firm's proposal and the opportunity to reduce its price and to revise its technical proposal. The agency's no-prejudice argument assumes that Eagle did not benefit from the additional discussions and opportunity to further revise its proposal, or that Ridoc would not have benefited from a similar opportunity, and we see no basis for that assumption. On the contrary: as explained above, Eagle did, in fact, lower its price significantly after the additional round of discussions, thereby displacing Ridoc as the low-priced offeror. Furthermore, the second round of discussions conducted with Eagle was not confined to price issues, and it led Eagle to revise and improve its technical proposal.[1] We therefore find that the EPA's additional discussions with Eagle enabled that firm to significantly improve its price and, arguably, to improve its technical standing in the subsequent reevaluation. In our view, this establishes that the agency's conduct of those discussions only with Eagle prejudiced Ridoc.

For these reasons, the protest is sustained.

We recommend that the EPA reopen the competition and conduct appropriate discussions with all offerors, including Ridoc, whose proposals were included in the competitive range, request revised proposals from these offerors, and make a new source selection.[2] In addition, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2004). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

Anthony H. Gamboa
General Counsel

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[1] For example, Eagle originally identified [DELETED]but, in a second-round discussion question, the EPA noted [DELETED]. Eagle [Second Round] Discussion Questions, Sept. 10, 2003. In its second revised proposal, Eagle [DELETED]. Eagle Revised Proposal, Sept. 10, 2003.

[2] Ridoc also raises numerous allegations concerning the EPA's alleged misevaluation of its technical proposal. In light of our recommendation to reopen the competition, we need not address these issues.