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**Comptroller General
of the United States**

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

Decision

Matter of: Eggs & Bacon, Inc.

File: B-310066

Date: November 20, 2007

Kevin Thomas for the protester.

Lt. Col. David Newsome, Jr., Department of the Army, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging source selection of higher-rated, higher-priced proposal over lower-rated, lower-priced proposal is denied where the agency's determination was based upon a reasonable evaluation consistent with the evaluation scheme that gave greater weight to non-price factors.

DECISION

Eggs & Bacon, Inc. protests the award of a contract to View One, Inc. under request for proposals (RFP) No. W91QV1-07-R-0016, issued by the Department of the Army, for pre-production, production, and event-production services.¹

We deny the protest.

The RFP, issued May 14, 2007, sought proposals for a fixed-price contract to provide non-military personnel, equipment, tools, materials, supervision, and any other non-personal services necessary to perform pre-production, production, and event-production services for the U.S. Army's "Spirit of America" (SOA) 2007 production at

¹ The protester was not represented by counsel who could be admitted to a protective order and therefore the protester did not have access to source selection sensitive and proprietary information. Accordingly, our discussion in this decision is necessarily general. Our conclusions, however, are based on our review of the entire record.

three venues.² The RFP provided for award on a best-value basis considering five evaluation factors: (1) prior institutional experience; (2) personnel skill/experience; (3) technical capability; (4) past performance; and (5) price. The non-price factors were equally weighted and combined were significantly more important than price.

Eggs & Bacon and View One were the only firms that submitted proposals in response to the RFP by the June 13 closing date. Eggs & Bacon submitted the lowest priced proposal at \$2,232,435, while View One’s proposal was for \$2,537,800.³ The non-price factors were evaluated as follows:

Offerors	Prior Institutional Experience	Personnel Skill/Experience	Technical Capability	Past Performance
Eggs & Bacon	Good	Acceptable	Marginal	Excellent
View One	Excellent	Excellent	Excellent	Excellent

Agency Report, Tab 10, SSEB Report, at 2.

Based upon the “evaluation of the proposals and a detailed assessment of the advantages and disadvantages associated with each” proposal, the source selection authority (SSA) determined View One’s proposal was the best overall value, recognizing Eggs & Bacon’s lower price but finding that this low price did not overcome View One’s significant technical advantage. Agency Report, Tab 11, Source Selection Decision Document. On July 10, the Army awarded View One the contract. After the agency denied Eggs & Bacon’s agency-level protest challenging the award, this protest to our Office followed.

Eggs & Bacon essentially challenges the agency’s conclusion that awarding the contract at a higher price was the best-value and claims that its proposal was in fact superior to View One’s.⁴

² The SOA is an Army showcase that brings the Army story to the public, honors the past and present sacrifices of American soldiers, and enhances Army recruiting efforts.

³ The source selection evaluation board (SSEB) determined the proposed prices were fair and reasonable.

⁴ While Eggs & Bacon argues that its debriefing was inadequate and otherwise flawed, we will not consider these issues, inasmuch as the adequacy and conduct of a debriefing is a procedural matter that does not involve the validity of an award. Healthcare Tech. Solutions Int’l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5. Although Eggs & Bacon also complains that the agency did not fairly consider its agency-level protest, our bid protest jurisdiction is limited to review of whether an agency’s procurement actions complied with procurement statutes and regulations, (continued...)

In a best-value procurement such as this, award may be made based upon a higher-priced proposal where the award decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced proposal outweighs the price difference. American Material Handling, B-297536, Jan. 30, 2006, 2006 CPD ¶ 28 at 4.

The record demonstrates that the agency did undertake a detailed comparison of the View One and Eggs & Bacon proposals, from which it reasonably concluded that View One had a significantly better technical proposal than Eggs & Bacon that was worth the associated price premium and overcame Eggs & Bacon's price advantage. Agency Report, Tab 10, SSEB Report; Tab 11, Source Selection Decision Document.

Specifically, the SSA adopted View One's proposal's excellent ratings under all of the evaluation factors. The SSA found that View One possessed extensive experience organizing SOA events and other similar productions, proposed personnel with extensive experience, had an "immense pool of talent that would benefit this production," had a technical proposal that contained precise information that addressed all aspects of the performance work statement (PWS), and had excellent past performance reference evaluations. Agency Report, Tab 11, Source Selection Decision Document, at 3-4.

While Eggs & Bacon also had excellent past performance reference evaluations, its proposal was otherwise rated inferior to View One's. Eggs & Bacon's prior experience, rated good, involved similar type of productions but was based largely on trade shows of short duration. Eggs & Bacon proposed experienced personnel, but did not explain exactly how they would be organized for this effort and there were indications that the proposed personnel had not worked together as a group, and thus its proposal was considered only acceptable under this factor. Eggs & Bacon's proposal was rated marginal under the technical capability factor because there was insufficient detail and clarity as to how and with what equipment the PWS requirements would be met, including such requirements as local editing facilities and certain specialized requirements, such as wide angle resolution, digital imaging and the use of rear projection of at least 1,300 square feet. Id. at 2-3.

Our review of the record, including the proposals, provides us with no basis to question the reasonableness of this evaluation, or the decision to select View One's higher-rated, higher-price proposal over Eggs & Bacon's lower-rated, lower-priced proposal since this result was permitted by the evaluation scheme, particularly given

(...continued)

31 U.S.C. §§ 3551-3552 (2000); the procedural fairness of an agency's review of an agency-level protest is not a matter within the scope of our bid protest jurisdiction. LLH & Assocs., LLC, B-297804, Mar. 6, 2006, 2006 CPD ¶ 52 at 5 n.8.

price's lesser weight in the evaluation scheme. In fact, Eggs & Bacon does not specifically question the agency's evaluation of its proposal despite having had access to this part of the record.⁵

Instead, Eggs & Bacon primarily questions the qualifications of the evaluators to evaluate the merits of its proposal. However, the selection of individuals to serve as proposal evaluators is a matter within the discretion of the agency; accordingly, we will not review allegations concerning the qualifications of evaluators of the composition of evaluation panels absent a showing of possible fraud, conflict of interest, or actual bias on the part of evaluation officials, none of which have been shown here. Glatz Aeronautical Corp., B-293968.2, Aug. 10, 2004, 2004 CPD ¶ 160 at 3 n.1.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁵ The protester has suggested that the agency could have conducted discussions to address questions about its proposal. However, the RFP here provided for award without discussions and cautioned offerors that their initial offer should contain the offeror's best terms from a price and technical standpoint. RFP at 8. Moreover, contrary to the protester's arguments, communications during a debriefing, whose purpose was to advise an offeror of the reasons for its failure to receive the award, do not constitute discussions to allow the offeror to improve its proposal. Consolidated Eng'g Servs., Inc., B-293864.2, Oct. 25, 2004, 2004 CPD ¶ 214 at 5.