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

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Decision

Matter of: Veterans Technology, LLC

File: B-310303.2

Date: January 7, 2008

Gary L. Rigney, Esq., Gary L. Rigney Law Office, for the protester.
Capt. Marlin D. Paschal, Department of the Army, for the agency.
Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency reasonably evaluated protester's proposal as unacceptable and on that basis, properly determined that protester's proposal was ineligible for award on the basis of initial offers.

DECISION

Veterans Technology, LLC (VetTech) protests the rejection of its proposal under request for proposals (RFP) No. W911M-07-R-0006 issued by the Department of the Army for engineering and technical support services for the Army's Space and Missile Defense Command, Forces Strategic Command, and other associated air, space and missile defense organizations. VetTech challenges the agency's determination that VetTech's proposal failed to comply with the solicitation requirements.

We deny the protest.

BACKGROUND

The solicitation was issued as a total small business set-aside and contemplated multiple awards of indefinite-delivery/indefinite-quantity contracts for a 1-year base period followed by four 1-year options. The RFP identified the following evaluation factors: technical, management, sample tasks, past performance and price. RFP at 108-11. Of relevance here, the RFP advised offerors that their responses to the sample tasks would be evaluated, and advised offerors to respond with sufficient detail to clearly demonstrate their approach to performing and understanding the sample task orders. *Id.* at 89-90.

Specifically, each response to the sample task orders was to be evaluated to determine whether the offeror: (1) grasped the scope and requirements of the task orders; (2) proposed a sound technical approach; (3) demonstrated an appropriate use of its proposed labor mix and other resources; (4) provided a sound task management philosophy and effective task order management approach; (5) demonstrated an understanding of the key management and technical factors; (6) possessed the technical depth necessary to complete the task order; and, (7) had past experience performing similar and/or related efforts. Id. at 110. In addition, with respect to the pricing of the task orders, the RFP provided:

The proposed price shall replicate the CLIN structure set forth in Section B. The offeror shall include a billable rate table by fiscal year depicting the maximum rates per labor category that would be paid. The offeror shall clearly explain the basis of price (e.g., basis of estimate) for each of the sample task order, to include the discounts proposed, methodology for application of the discounts, pricing of non-labor resources (ODCs) and pricing of travel.

Id. at 97.

With respect to the price proposals to be prepared for the sample task orders, the RFP advised that any significant, unexplained, inconsistency would raise questions about the offeror's understanding of the nature and scope of the work required to perform the task orders, and about the offeror's ability to perform the tasks. Id. at 111. The RFP set forth the agency's estimated lump-sum amount for each fiscal year and total program funding amount for the sample task orders. Each task order also contained a not-to-exceed dollar amount for travel costs.

Finally, the RFP advised that the agency would use an alternate source selection procedure applicable to highly-complex RDT&E (research, development, testing and experimental) efforts. Id. at 112. This alternate procedure anticipated evaluation of proposals and selection of sources for award on the basis of initial offers, without holding discussions or establishing a competitive range. Id. After selection of the intended awardees, the solicitation anticipated "in-depth negotiations leading to contract awards...with the selected sources." Id. The RFP stated that these final negotiations with the selected offerors would not result in either the selected offeror's proposal being improved, or displacement of another selected offeror. Id. The RFP also stated that in order to be eligible for a contract award, an offeror must be considered acceptable in all factors and subfactors, Id. at 108, and explained that the agency anticipated awarding up to seven contracts on the basis of the best overall value to the government, but reserved the right to make fewer awards. Id. at 107.

On June 11, 2007, proposals were submitted by 12 offerors, including VetTech. The proposals were subsequently evaluated by the evaluation team. VetTech's proposal was rated "good" with respect to the technical, management, and past performance

evaluation factors. However, VetTech was rated “unacceptable” with respect to VetTech’s responses to the sample task orders.

With respect to VetTech’s approach to the sample tasks, the agency concluded that VetTech’s solutions reflected high risk based on a lack of clarity in the proposal, and the company’s failure to demonstrate an understanding of the task order requirements. Agency Report (AR), Tab 13, Source Selection Decision, at 12. Specifically, the Source Selection Authority (SSA) identified four reasons for concluding that the protester’s proposal was unacceptable under the sample task order evaluation factor. These were that: (1) VetTech’s proposed prices exceeded the government’s estimated funding for both of the task orders; (2) VetTech failed to demonstrate that the corporate teaming members proposed to support the task orders possessed the requisite experience; (3) VetTech failed to present its technical approach to supporting several tasks under sample task order No. 2; and (4) VetTech failed to demonstrate that the personnel proposed (as opposed to the corporate teaming members in No. 2, above) possessed the requisite qualifications for their positions. Id.

Upon completion of the evaluation, the agency decided to make award without discussions to three offerors. AR, Tab 2, Contracting Officer’s Statement, at 3. After selecting three offerors, the agency conducted discussions with the apparent successful offerors, as anticipated by the alternate source selection procedures identified in the RFP. On September 6, VetTech was notified of its elimination from the competition; the company was given a debriefing on September 19. This protest followed.

DISCUSSION

The protester argues that the agency unreasonably found its proposal unacceptable because the agency improperly evaluated its response to the sample task orders in the areas of cost, personnel clearances, team member experience and technical approach. We have reviewed each of these contentions and find no basis to disagree with the evaluation here. For illustration, we discuss below two of the areas where our review of the solicitation, VetTech’s proposal, the evaluation materials, and the arguments raised during the course of this protest, lead us to conclude that the agency reasonably found VetTech’s proposal unacceptable under the sample task order evaluation factor.¹

¹ While the examples below do not include VetTech’s challenge to the evaluation conclusion that VetTech’s proposed sample task prices exceeded the RFP-provided total program funding amount, we note for the record that there is no dispute on this issue—VetTech’s price, in both instances, exceeded the dollar ceiling for these sample tasks by a small amount. While VetTech argues it was misled by an ambiguity in the solicitation about the not-to-exceed amount for travel costs for these tasks, we see

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Team Member Experience

In responding to the sample task orders, offerors were asked to identify the composition of the contractor team that would be used to perform the task. This required listing the prime contractor, the lead subcontractor (if not the prime) and all other companies that would be involved. Offerors were then instructed to describe how the proposed contractor team would perform the sample task by indicating which company would perform which parts of the team effort. In addition, the RFP required that the proposal describe up to three team examples of experience.

VetTech in its response to Task Order 1, listed itself, Cepeda Systems & Software Analysis, Inc. (CSSA) and Sparta, Inc. as the team members VetTech proposed to support this task order, however, the task-related experience examples provided by VetTech identified the experience of individuals employed by Computer Sciences Corporation, MagnaCom and CSSA. VetTech Proposal, Vol. IV, at IV-1-2. The agency found VetTech's response deficient because VetTech failed to provide the related experience of individuals employed by team members proposed to support the task orders. Consequently, the agency could not determine whether VetTech's proposed team members themselves had the required task-related experience.

Likewise, with Task Order 2, VetTech listed CSC, Sparta and VetTech as the team members to support this task order, however, VetTech only identified the experience examples as those of the "VetTech team member" and did not identify which specific team member possessed the task-related experience. *Id.* at IV-2-2.

In its protest to our Office, VetTech argues that there was no requirement that the proposed individuals with task-specific experience had to be employed by the companies designated to support the tasks, and thus its proposal met the RFP requirement.² We disagree with VetTech's assertion.

While VetTech argues that there was no requirement to provide this information, the RFP did require that the offeror identify at least three team examples of task-related

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nothing ambiguous about the solicitation's guidance in this area. In addition, given the solicitation's clear indication that the agency intended to select awardees on the basis of initial proposals, there was no requirement for the agency to open discussions with VetTech on this matter.

² VetTech in its response to the agency report attempts to clarify its proposal by identifying the task specific experience of its team members, information that should have been provided in its initial proposal.

experience. VetTech's proposal was unclear as to which team members would be performing the work and failed to provide the task specific experience of the team member.

It is incumbent upon the protester to submit a response to the sample task orders that clearly demonstrated that it understood the requirement and proposed a plan, with appropriate team members, that detailed its ability to satisfactorily perform the task. An offeror has the responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In this regard, an offeror must affirmatively demonstrate the merits of its proposal, and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Where a protester challenges an agency's evaluation of a proposal's technical acceptability, our review is limited to considering whether the evaluation is reasonable and consistent with the terms of the RFP and applicable procurement statutes and regulations. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. On this record, we find no basis to question the reasonableness of the agency's determination that VetTech's proposal failed to meet the solicitation requirements.

Personnel Clearances for Sample Task Order 1

For sample task order 1, the RFP stated that portions of the work involve sensitive compartmented information (SCI) which is required to be performed in government-provided sensitive compartmented information facilities (SCIF). RFP attach. 8, at 4. The agency states that access to an SCIF requires, at a minimum, a top secret clearance.

VetTech in its response to Task Order 1 indicated that it intended to use designated program high security facilities, as necessary. AR, Tab 10, VetTech Proposal, Response to Sample Task Order 1, at 9. VetTech also stated that its team has "all the required clearances, access and secure facilities to ensure that all data associated with this effort will be protected and safeguarded as required." Id. at 7. The agency found VetTech's response deficient because it failed to demonstrate how VetTech would provide the support required in the agency's SCIF given VetTech's failure to identify which of its proposed personnel would work in the SCIF, and failed to identify the security clearances of the personnel proposed.

The protester argues that the RFP did not require offerors to identify the security clearances of the individuals proposed and now asserts that two of the personnel proposed for this effort do possess Top Secret clearances.³

Again, we think offerors were required to demonstrate their understanding of the sample task requirements by proposing a methodology for performance of the sample task, and demonstrating their ability to satisfy the requirement. The RFP specifically stated that access to SCI data was needed in order to accomplish this task. Since VetTech did not identify which of its proposed personnel had the appropriate security clearances to perform this work, we think the agency reasonably concluded that the protester failed to demonstrate an understanding of the requirements of this task.

In summary, the protester failed in its responsibility to clearly demonstrate compliance with the RFP requirements with respect to the sample task orders. The record supports the reasonableness of the agency's decision to find the proposal unacceptable for failure to adequately address the sample task orders, and the protester's mere disagreement with the agency's judgment does not establish that the agency acted unreasonably.⁴

³ With respect to this issue, the protester includes a detailed discussion of the regulations and directives applicable to classified information under conditions that do not appear to be relevant here. The RFP's sample task orders specifically stated that access to SCI data was necessary to perform these task orders, and that access to SCIF facilities was necessary.

⁴ To the extent that VetTech argues that, at a minimum, its protest should be sustained for inadequate documentation by the agency of its conclusions of technical acceptability, we disagree. In this regard, VetTech points out that the individual evaluator worksheets do not identify its proposal as unacceptable--as was ultimately reflected in the consensus evaluation report and the agency's source selection decision. It is not unusual for individual evaluator ratings to differ from one another, or to differ with the consensus ratings eventually assigned; source selection officials may reasonably disagree with the evaluation ratings and results of lower-level evaluators. See Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8. The overriding concern for our purposes is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of the proposals. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1. With respect to VetTech's more general challenges to the documentation in its protest, we note that the record consists of contemporaneous evaluation worksheets and a source selection decision which demonstrate the agency's concerns with respect to the protester's response to the sample task orders. Here, based on our review of the evaluation record, we conclude that the record contains more than adequate support for the agency's ultimate conclusions.

Lastly, VetTech argues that all of the agency's negative findings could have been clarified without revisions to VetTech's proposal and in any event were not sufficient to determine that VetTech's proposal was unacceptable. Since the solicitation advised offerors that the agency intended to make award without discussions, the protester could not presume it would have a chance to correct deficiencies and weaknesses through discussions. The burden was on VetTech to submit an initial proposal that adequately demonstrated its merits, and the protester ran the risk of rejection by failing to do so. DRT Assocs., Inc., B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47 at 2. There is no basis in this record for concluding that the decision to award without discussions was improper, or that the rejection of VetTech's proposal was unreasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel