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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: Computer & Hi-Tech Management, Inc.

File: B-293235.4

Date: March 2, 2004

Edward J. Tolchin, Esq., Fettmann, Tolchin & Majors, for the protester.
Claude P. Goddard, Jr., Esq., and Mary K. Holohan, Esq., Wickwire Gavin, for User Technology Associates, Inc., an intervenor.
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

1. Protest of exclusion of protester's proposal from the competitive range is denied where the agency's evaluation was conducted in accordance with announced evaluation criteria and the record supports the evaluators' conclusions.
2. Where solicitation advised prospective offerors that the competitive range might be limited for purposes of efficiency, agency's determination in this regard is unobjectionable where protester fails to show the determination was unreasonable.

DECISION

Computer & Hi-Tech Management, Inc. (CHM) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. CM1301-03-RP-0019, a total small business set-aside, issued by the Department of Commerce (DOC), for information technology (IT) services. CHM contends that exclusion of its proposal was based on the agency's improper evaluation.

We deny the protest.

This procurement is a follow-on to an earlier procurement, known as the Commerce Information Technology Solutions (COMMITTS) program. The current procurement, referred to as the Commerce Information Technology Solutions Next Generation (COMMITTS NexGen) program, will create a pool of small business firms certified under multiple North American Industrial Classification System (NAICS) codes to meet the demands of federal agencies for IT solutions. RFP amend. 6, § B.1 at 2.

The COMMITTS NexGen solicitation will use a three-tier process for submission of proposals as well as for task order competition among the ultimate contract awardees. The tiers are defined by a firm's annual level of revenue and the associated NAICS code under which they qualified. RFP amend. 3, § C.2 at 6.

On August 18, 2003, the agency issued the solicitation for this procurement, which 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. As amended, the RFP provided that the procurement would be conducted in three phases and may encompass several competitive range determinations in accordance with Federal Acquisition Regulation (FAR) § 15.306(c)(2).¹ RFP amend. 6, Cover Letter at 1. Phase I is a down-select process in which DOC intends to select the offerors that will proceed to the next phase of the competition. In Phase II, qualified offerors will submit a more detailed technical and price proposal in accordance with the Phase II solicitation instructions. Under Phase III (which is optional) offerors would be invited to make oral presentations. RFP amend. 5, § L.11.1 at 64-65. This protest concerns the Phase I competition for Tier III offerors only.²

As relevant here, the RFP Phase I proposal instructions specified as follows:

Offerors shall respond to the request for information identified as an attachment to the solicitation cover letter. This will include responses to the pertinent questions for the offeror [referred to in the record as the "down-select questions"] as well as past performance information and pricing information. The government will evaluate responses to questions as they relate to the offeror's overall experience and quality of services provided and pricing information. The criteria used will include the offeror[']s technical capabilities, experience in providing similar work, and quality of completed work as determined by past performance information. Offerors shall also submit pricing information in accordance with Section L.11.2.1.2.

RFP amend. 6, § L.11.2.1 at 65.

¹As relevant to this protest, the RFP informed 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 among the most highly rated proposals if the number of proposals that would otherwise be in the competitive range exceed the number at which an efficient competition can be conducted. RFP § L.2(f)(4), at 59.

²Specifically, Tier III firms consists of firms that are certified as small, with less than 1,500 employees; these firms will only be allowed to compete on task orders with a life cycle value in excess of \$40 million. RFP amend. 3, § C.2 at 5.

Under price, the RFP required offerors to complete a pricing matrix included as an attachment to the solicitation and provide rates for designated standard labor categories on both an hourly and annual basis. The RFP directed offerors to assume that the work would be performed at a Washington, DC location and reflect government-site labor rates, and were instructed to use 1,800 annual hours for purposes of calculating the total price over a 5-year period. 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 in section L.11.2.1.2 as follows:

Prices should be tied into an existing contract arrangement such as a [General Services Administration] Schedule contract or another [government-wide acquisition contract]. Separately identify the specific contract vehicle where the prices are derived from including the applicable contract number. All proposed labor rates must have been negotiated on a prior procurement within a year of the response to this solicitation.³

RFP amend. 6, § L.11.2.1.2 at 65a.

Section M of the RFP provided that offerors' responses to the down-select questions would be evaluated under the following factors: quality; experience/technical capability; and price. RFP amend. 6, § M.4 at 74. The RFP stated that the quality and experience/technical capability factors were of equal importance and each was more important than price. When combined, the non-price factors were significantly more important than price.⁴ *Id.* Under the quality evaluation factor, the RFP also stated that an offeror would be evaluated on the quality of the service provided, that is, its past performance. For the experience/technical capability factor, the agency would evaluate the offeror's overall experience with similar type of work. With regard to

³The source selection plan, which was not disclosed in the RFP, indicated that offerors who propose rates from existing government contracts would satisfy the criteria of price realism and price reasonableness. If an offeror did not propose rates from an existing contract, the agency then would perform a price analysis to determine if the prices were fair and reasonable. Agency Report (AR) exh. 26, at 5.

⁴While the same technical criteria applied to all three tiers, the minimum levels of accomplishments would be more stringent for the higher tiers. For instance, the solicitation advised that "one relevant instance of cited experience may be acceptable for a Tier I offeror while three or more relevant experience[s] are required for a Tier III offeror." RFP amend. 5, § M.3 at 71. In addition, the RFP stated that each tier would be evaluated independently utilizing the stated evaluation criteria. RFP amend. 6, ¶ P at 6.

the price evaluation, section M stated:

Price proposals will be evaluated for realism and reasonableness. Government-site rates for work in the Washington, DC area will be examined to determine if they deviate above or below what is expected. If prices are excessively low or unrealistically high such information will indicate a lack of understanding of the requirements. A designated sample of rates will also be compared against those of other offerors to determine if they are reasonable.

RFP amend. 6, § M.4.3 at 74.

The solicitation required submission of proposals by August 26, 2003. By that date, the agency received [DELETED] proposals from Tier III firms, including CHM. CHM currently has a COMMITS contract and has performed task order work for various agencies, including DOC. Contracting Officer's Statement at 5. In evaluating offerors' submissions, the technical evaluation panel (TEP) used a color-coded rating system to evaluate the offerors' responses to the down-select questions and the pricing information.⁵ The results of the evaluation of proposals were summarized by the chairman of the TEP in a detailed memorandum to the contracting officer.⁶ AR exh. 15, TEP Evaluation Memorandum. In that report, the TEP noted, among other things, that offerors whose proposals were assigned an overall blue rating demonstrated their potential to "deliver top quality IT services and solutions in a performance based environment." Offerors whose proposals were rated green overall were found to have "specific areas where they excelled" but the

⁵The RFP contains definitions for each rating. For example, under the quality factor (denominated as past performance by the RFP), a blue rating was defined as follows: "Based on information obtained on the quality and satisfaction of work provided, essentially no doubt exists that the offeror will successfully perform work contemplated by this procurement." A rating of green essentially meant "slight concerns" were raised but the overall risk level was good. Under the experience/technical capability factor (denominated as overall experience with similar type work), 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. As to price, a blue rating meant prices were "realistic" and compared "very favorably" with other offerors within a tier; a rating of green meant that prices were "realistic" and compared "favorably" with others. Contracting Officer's Statement at 3-5; Source Selection Plan at 3-5.

⁶The extensive TEP memorandum addresses the Phase I evaluation of [DELETED] proposals received from all three tiers. The proposals received from Tier I and Tier II offerors are not relevant to the protest issues and, accordingly, are not discussed.

TEP noted that these offerors did not provide “an overwhelming clearly comprehensive response” for each of the down-select questions. Id. at 7-8. The TEP recommended that only those offerors whose proposals received an overall blue rating should proceed to Phase II.

The price evaluation team (PET) reviewed the offerors’ pricing within individual tiers and found that all offered prices were based upon rates already established through existing contracts and the PET determined that all offerors’ prices were fair and reasonable. The PET then performed an independent price analysis by developing a hypothetical sample task order and assigning hours for each labor category. Within individual tiers, an average price for the sample task order was developed and after calculating each offeror’s proposed cost using the pricing proposal rate matrix, a total price was assigned to each offeror based on projected rates. Each offeror then received a color rating after its price was evaluated. An offeror whose proposed prices were [DELETED] percent or more below the average price was considered to be very favorable and its proposal received a blue rating. Those whose prices were plus or minus [DELETED] percent of the average were evaluated as favorable and their proposals were assigned a green rating. Contracting Officer’s Statement at 12-13; AR exhs. 13a-13q, Tier III Price Evaluations; AR exh. 25, CHM Debriefing Materials, at 23-24. The average Tier III price was [DELETED]; since CHM’s evaluated price of [DELETED] was more than [DELETED] percent above the average, its price proposal was assigned a green rating. AR exh. 13(c), CHM Price Evaluation; AR exh. 25, CHM Debriefing Materials at 25.

In order to determine which proposals should be included in the competitive range, the contracting officer reviewed the technical and price evaluation results and determined that the competitive range would be limited to the [DELETED] proposals assigned an overall blue rating. AR exh. 14, Final Evaluation Report. That rating took into account the ratings for the technical factor (which, in turn, reflected the ratings for the offerors’ responses to the 10 down-select questions); past performance (for which CHM and the [DELETED] competitive-range offerors all received blue ratings); and price.

The agency reports the following with regard to the competitive range determination:

This determination was made based on the fact that those offerors were substantially stronger in areas where the government believed its requirements would be met, as well as an adequate amount of competition within each tier. If offerors that had received an overall rating of “green” had been included in the competitive range, the [agency] would have had to evaluate over [DELETED] proposals, effectively precluding fair and timely evaluations. If those with an overall “yellow” rating had been included, effective and timely evaluations would have been impossible.

Contracting Officer's Statement at 7. The remaining offerors, including CHM, were informed of their exclusion and after requesting and receiving a debriefing from the agency on November 24, CHM filed this protest with our Office.

CHM protests that its proposal was improperly excluded from the competitive range on the basis of an improper evaluation. More specifically, CHM maintains that its proposal should have been assigned a rating of blue rather than green under down-select question Nos. 1, 9, and 10, arguing that its responses to these questions were misevaluated. CHM also contends that the agency's evaluation of price proposals was based on an undisclosed price evaluation plan and that CHM and other offerors were impermissibly excluded from the competitive range for purposes of efficiency. Protest at 3-5, Protester's Comments at 8.

FAR § 15.306(c)(1) requires the contracting officer to establish a competitive range comprised of all the most highly rated proposals based on evaluation of the information submitted in each proposal against the stated evaluation criteria unless the competitive range is further reduced for purposes of efficiency. 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 protests of competitive range determinations, we will not reevaluate proposals; rather, we will review the record to ensure that the evaluation and competitive range determination were reasonable and consistent with the terms of the solicitation. Matrix Gen., Inc., B-282192, June 10, 1999, 99-1 CPD ¶ 108 at 3. A protester's disagreement with the agency does not render the evaluation unreasonable. Id. As explained in greater detail below, CHM's protest allegations regarding the evaluation of its proposal responses to the cited questions constitute mere disagreement with the agency's evaluation judgments and fail to demonstrate that the evaluation was unreasonable.

The first instance where CHM alleges its proposal should have received a higher rating relates to the evaluation of CHM's response to down-select question No. 1. Under this question, the offeror was required to provide a summary of its experience in moving software design projects through the entire system life cycle, highlighting the production to operations and maintenance phases, and to describe the challenges and lessons learned from its experience in providing design integrity for projects where migration of data from legacy systems was involved. RFP amend. 5, Question No. 1. The TEP evaluation noted, among other things, that CHM's response did not "specifically describe nor provide adequate detail on challenges and lessons learned from experience providing design integrity where migration of data from legacy systems was involved." See, e.g., AR exh. 11c, Individual Evaluator's Ratings at 13; exh. 25, CHM Debriefing Materials at 9. While this down-select question required CHM to describe the challenges and lessons learned, CHM's proposal response used vague descriptions such as the firm "utilizes best practices" and "lessons learned" without providing further information which identified these best

practices and lessons learned. Because of this, the agency rated the protester's response to this question as green. Although the protester disagrees with this evaluation and insists that its proposal described the challenges and lessons learned in "great and clear detail," Protester's Comments at 7, we view the agency's evaluation of the protester's proposal as reasonable.

Down-select question No. 9 required the offeror to provide an overview of its experience in the review of management procedures and controls and an organization's operational compliance with published policy or guidance documents, and to provide specific examples. RFP amend. 5, Question No. 9. The TEP rated CHM's response to this question green rather than blue because, although CHM's response provided a detailed description of the process for conducting reviews, it failed to provide adequate detail regarding CHM's actual experiences in reviewing management procedures and controls.

Specifically, CHM's response to question No. 9 contains a single example based on one contract. AR exh. 10c, CHM Proposal at 9, AR exh. 11c, Individual Evaluator's Ratings. While CHM insists that its response to this question gave an overview and "multiple examples" of its review of management procedures and controls based on "an extremely complex contract," we conclude that DOC reasonably determined that CHM's response failed to satisfy the requirement that the protester provide multiple examples--as opposed to a single example--regarding its actual experience in reviewing management procedures and controls. As discussed previously, the amended RFP required Tier III offerors, such as CHM, to provide three or more examples of relevant experience to demonstrate the firm's level of accomplishment under this question. RFP amend. 5, § M.3 at 71. Since CHM did not provide the required number of examples to satisfy this requirement, we have no basis to question the evaluators' judgment that CHM's response warranted a rating of green rather than blue.

Down-select question No. 10 required CHM to describe its recent experience which demonstrates responsiveness in providing the services of a Computer Incident Response Team for similar organizations and stated that CHM should specifically address how it has responded to computer incidents, the forensics analysis methods used, and procedures followed to return IT systems to service following incidents or attack. RFP amend. 5, Question No. 10. The TEP again found that CHM's proposal failed to furnish the required information regarding its actual experience. Specifically, the evaluators noted that while CHM's response provided a description of CHM's process, the response failed to describe CHM's actual experience in applying the identified processes to specific computer incidents and the manner in which such incidents were resolved. AR exh. 10c, CHM Proposal at 9; exh. 11c, Individual Evaluator's Ratings; exh. 25, CHM Debriefing Materials at 18. Given CHM's failure to describe its actual experience in response to this question, we conclude the agency's evaluation was reasonable. In our view, the protester has not

demonstrated that the evaluators' scoring of its proposal responses to these questions was unreasonable.

CHM also alleges that its proposal was subjected to unequal treatment because one or more of the proposals included in the competitive range had "equivalent responses" for question Nos. 1, 9, and 10 to those in CHM's proposal. Protester's Comments at 4-7. The agency responds that the competitive range offerors' responses to these questions contained greater information regarding their actual experiences.⁷ In contrast, as discussed above, CHM's responses to these questions primarily addressed CHM's general processes and procedures, and failed to describe its actual experience in these areas. Our review of the record supports the reasonableness of the agency's evaluation in this regard; accordingly, we find no merit in CHM's assertion that its proposal was subjected to unequal treatment.

Next, the protester maintains that the agency's price evaluation was unreasonable. Protester's Comments at 1-3. CHM essentially maintains that the prices proposed by the competitive range offerors were unrealistically low.⁸

The RFP provided that price proposals would be evaluated for realism and reasonableness, but did not specify a particular manner in which this analysis would be performed. RFP amend. 6, § M.4.3 at 74. In this regard, the FAR provides a number of price analysis techniques that may be used, including comparison of the prices received with each other. FAR § 15.404-1(a)(1) and (b)(2). As for price realism, the nature and extent of an agency's price analyses are matters within the sound exercise of the agency's discretion. See HSG Philipp Holzmann Technischer Serv. GmbH, B-289607, Mar. 22, 2002, 2002 CPD ¶ 67 at 6.

Here, the RFP provided, among other things, that the proposed rates would be "examined to determine if they deviate above or below what is expected." RFP amend. 6, § M.4.3 at 74. The agency explains that its independent price assessment was based on a standard level of effort considered reasonable and representative of actual tasks contemplated for the COMMITTS NexGen project. That is, the price team evaluated prices based on applying each offeror's proposed hourly rates to a sample task. Although CHM is dissatisfied with the results of the agency's price analysis, it provides no support for the assertion that the methodology on which the agency

⁷For example, the competitive range offerors discussed experience with operating a help desk, experience with firewall design, implementation and maintenance, as well as information technology security, policy development and review. AR exh. 15, TEP Evaluation Memorandum.

⁸CHM's evaluated price was more than [DELETED] percent higher than the average price proposed by offerors; all of the competitive range offerors' evaluated prices were lower than CHM's.

relied was improper. Similarly, other than the fact that the competitive range offerors proposed prices lower than its own, CHM offers no support for the assertion that those lower prices were unreasonable. Accordingly, there is no basis to question the agency's evaluation of CHM's and the other Tier III offerors' proposed prices.

Finally, CHM's complains that the agency impermissibly failed to ensure that the competitive range was comprised of the greatest number of offerors that would permit an efficient competition. In its view, an efficient competition could be conducted even if proposals such as CHM's, which received an overall rating of green, were included in the competitive range. The RFP specifically permitted the agency to limit the number of proposals in the competitive range to the greatest number that would permit an efficient competition. FAR § 15.306(c)(2). Here, the agency did so, selecting [DELETED] proposals for inclusion in the competitive range. The record shows that, while CHM submitted an acceptable proposal, its proposal was not among the [DELETED] most highly rated ones. We see no basis to question the agency's determination that a competitive range of [DELETED] proposals was the largest number that could be permitted and still allow an efficient competition. (Indeed, we believe the agency had the discretion to establish a smaller competitive range.) On this record, the agency reasonably excluded CHM's proposal from the competitive range.

The protest is denied.

Anthony H. Gamboa
General Counsel