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Decision

Matter of: TekStar, Inc.

File: B-295444; B-295444.2

Date: February 18, 2005

Robert Gardner, Esq., for the protester.

William A. Roberts, Esq., Steven N. Tomanelli, Esq., and Joseph E. Ashman, Esq., Wiley Rein & Fielding, for Chugach McKinley, Inc., an intervenor.

Maj. Lawrence M. Anderson and Capt. Byron G. Shibata, Department of the Air Force, 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

Challenge to the exclusion of the protester's proposal from the competitive range is denied where the record shows that the evaluation was reasonable and consistent with the evaluation criteria announced in the solicitation.

DECISION

TekStar, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. F65501-03-R-0002, issued by the Department of the Air Force for services to provide base operations and support for Eareckson Air Station in Alaska. TekStar contends that the agency improperly evaluated its proposal.

We deny the protest.

BACKGROUND

The RFP, issued on May 17, 2004, as a competitive section 8(a) total set-aside, contemplated the award of a cost-plus-award-fee contract for a 2-month transition period and a 6-month base period with up to seven 1-year option periods. The performance work statement (PWS) provided a description of the contract requirements that covered the operations and maintenance of the airfield and its support infrastructure. The RFP also included Interservice Support Agreements

(ISSA) that identified requirements to provide other tenants at Eareckson with base support, facilities, and utilities for their equipment at Eareckson.¹

The RFP provided that award was to be made on a best value basis. The RFP listed the following evaluation factors and subfactors:

Factor 1: Mission Capability Factor:

Subfactor 1: Management Approach

Subfactor 2: Technical Approach

Subfactor 3: Facilities Operation and Maintenance

Subfactor 4: Mission Support Services

Factor 2: Proposal Risk

Factor 3: Past Performance

Factor 4: Cost/Price

RFP ¶ 3.1.

Under the RFP, the mission capability, proposal risk, and past performance factors were equal in importance and each of those factors was more important than the cost/price factor. The RFP stated that all requirements specified in the solicitation were mandatory and that each offeror's proposal submission should represent how that firm would perform all the requirements specified in the solicitation.

RFP ¶ 4.1.3. Offerors were advised to prepare their proposals in an orderly format and in sufficient detail to enable the government to make a thorough evaluation of the contractor's technical competence and ability to comply with the contract task requirements specified in the PWS. RFP ¶ 4.2.1.

Two offerors, TekStar and Chugach McKinley, Inc. (CMI) submitted proposals by August 2. A source selection evaluation team (SSET) evaluated the proposals. While TekStar submitted the lowest-cost proposal, the SSET found numerous deficiencies and significant weaknesses in TekStar's proposal and found that the proposal contained no strengths. The SSET concluded that TekStar's proposal was unacceptable under the mission capability factor and that its proposal presented a high performance risk. The SSET found that TekStar's proposal was incomplete and

¹ Eareckson is located on Sheymya Island in the northern Pacific Ocean, approximately 1,500 miles from Anchorage, Alaska.

did not demonstrate TekStar's understanding of the requirements. Consequently, based on the SSET's findings, the source selection authority determined that TekStar's proposal should not be included in the competitive range. The Air Force subsequently notified TekStar on August 27 that its proposal was not included in the competitive range. After receiving a debriefing, TekStar filed an agency-level protest on September 24. The agency denied TekStar's protest and TekStar filed its protest with our Office on November 19.

ISSUE AND ANALYSIS

TekStar challenges the evaluation of its proposal and maintains that the agency's determination not to include TekStar's proposal in the competitive range, leaving only CMI's proposal in the competitive range, was unreasonable.

The determination of whether a proposal is in the competitive range is principally a matter within the discretion of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. Our Office will review an agency's evaluation of proposals and determination to exclude a proposal from the competitive range for reasonableness and consistency with the criteria and language of the solicitation and applicable statutes and regulations. Novavax, Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13. Here, as explained in greater detail below, we conclude that the evaluation of TekStar's proposal and the decision to exclude its proposal from the competitive range were reasonable and consistent with the terms of the solicitation. The record supports the agency's determination that TekStar's proposal was unacceptable and presented a high performance risk under the mission capability factor.

Initially, TekStar argues that the agency improperly relied on the PWS, rather than on sections L and M of the RFP, as the basis for the evaluation of TekStar's proposal. TekStar maintains that it was cited for deficiencies and weaknesses related to its failure to address the entire set of PWS task requirements even though section L of the RFP purportedly directed offerors to only address specific elements of the work covered under the RFP. We think the protester's reading of the RFP is wrong.

Contrary to the protester's position, the RFP required contractors to provide all personnel, vehicles, tools, supervision, and other items and services necessary to perform operation and maintenance requirements at Eareckson. RFP § 1, Description of Services. Tasks described and responsibilities assigned throughout the PWS were stated as being the minimum essential for acceptable contractor performance and mission accomplishment. Id. The solicitation further provided that offerors were to provide support and services to other entities on Eareckson as specified in certain listed ISSAs. RFP ¶ 1.4.10.2. The solicitation further stated that all requirements specified in the solicitation were mandatory and that proposal submissions should represent how a company would perform all the requirements specified in the solicitation. RFP ¶ L.4.1.3. In addition, as will be shown below,

under each subfactor, both sections L and M of the RFP were unambiguous in requiring offerors to address all solicitation requirements.

Management Approach

For the management approach subfactor under the mission capability factor, offerors were to explain their comprehensive management approach to accomplish the requirements identified in the PWS. RFP ¶ 4.2.3.1.1.1. Further, the RFP provided that an offeror's proposal was to be evaluated based on its proposed staffing levels and skill mix to ensure successful management and execution of the program, personnel, training, quality control, and transition. The evaluators concluded that TekStar's level of staffing and the multi-tasking of a number of key personnel demonstrated that it did not clearly understand the complexity of the requirements. The evaluators found that TekStar's management approach was inadequate to address the contract requirements. Specifically, the evaluators found that TekStar did not satisfy personnel requirements in a number of areas. For example, TekStar did not meet the requirements for security personnel, for a full-time emergency medical technician (EMT), and for a fire department.

TekStar specifically argues that the one major deficiency cited by the evaluators--that it proposed only six security force personnel as opposed to the 24 security personnel that the agency estimated were necessary to staff security requirements--was the result of a poorly worded RFP requirement. TekStar correctly argues that the solicitation did not specifically state that 24 security personnel were required. However, as the agency points out, the RFP did state that a security office force consists of a shift supervisor, a security controller/alarm monitor/dispatcher, a two-person external security response team, and a two-person internal security response, for a total of six security personnel. Ground-Based Midcourse Defense (GMD)-ISSA at 21. Further, under the RFP, security officers were to maintain security operations 24 hours a day, 7 days a week, and 365 days per year. Due to safety concerns, security personnel in the performance of their duties were not allowed to work consecutive shifts or allowed to work an unacceptable period of consecutive days (14 days) without time off. Additionally, under other than emergency conditions, shifts could not exceed 12 hours in duration. *Id.* Thus, given the RFP requirements, we think the agency reasonably concluded that the security personnel requirements could not be met by six security personnel as proposed by TekStar.

Similarly, the RFP required one Alaska State Emergency Medical Technician (EMT) on duty at all times. TekStar proposed only one EMT without indicating how it would meet the requirement for 24-hour coverage. The agency concluded that TekStar's proposal of one EMT did not address the need for 24-hour coverage, allowing for shifts, vacations, or illness, and thus TekStar's proposed staffing represented a significant life safety concern, given the Air Station's remote location.

TekStar also argues that it was improperly downgraded for proposing only a fire brigade instead of a 30-person full-time fire department. TekStar contends that the RFP did not state that it was the contractor's responsibility to maintain a full-time fire department. While the protester is correct that the PWS only required offerors to establish and train a fire brigade from the existing workforce, the ISSA contained an independent requirement to provide a full-time fire department and rescue crew for structural fire operations. GMD-ISSA at 14. The protester maintains that offerors were never advised that they were responsible for all, or any, of the requirements in the GMD-ISSA. However, as discussed above, the RFP specifically stated that offerors were required to provide services to Eareckson's tenants in accordance with the ISSA. RFP ¶ 1.2.10.1.1. We think the agency reasonably concluded that TekStar failed to meet this requirement.

The evaluators also cited numerous deficiencies with respect to TekStar's quality control approach. For example, the agency did not believe that TekStar had proposed adequate management oversight at a level needed to address quality control issues, had concerns regarding TekStar's emphasis on employee-level inspections, questioned the staffing for these inspections, and found that TekStar failed to provide descriptive information on how these inspections would be conducted. TekStar generally disagrees with the agency and cites several provisions of its proposal where it allegedly addressed the agency's concerns. However, based on our view of the record, we find reasonable the agency's conclusion that TekStar had not adequately addressed quality control requirements in the above-identified ways.

Finally, due to the sensitivity of information handled by Air Station personnel and the types of missions performed by Eareckson personnel, the RFP required that "employment on [Eareckson Air Station] shall be limited only to those contractor employees who have been determined trustworthy as a result of the favorable completion of a National Agency Check." RFP amend. 8, ¶ 1.4.8.1. The agency concluded that it was not clear from TekStar's proposal whether the firm committed to having all of its employees at Eareckson undergo a National Agency Check. In fact, TekStar states in its proposal that only certain employees requiring unescorted entry to "controlled areas" would have a current favorable completed National Agency Check. TekStar's Proposal at 88.

In our view, the record provides a reasonable basis for the evaluators' concerns regarding the adequacy of TekStar's proposal under the management approach subfactor and we have no basis to object to the determination that TekStar's proposal was unacceptable under this subfactor.

Technical Approach

For the technical approach subfactor under the mission capability factor, among other things, offerors were to describe how communications-electronics systems

would be maintained, the procedures for physical security at all facilities, and how airfield facilities would be inspected. RFP ¶ 4.2.3.2. The RFP provided that offerors would be evaluated on the ability and methodology for maintaining the communications equipment, the soundness and credibility of the approach for physical security, the approach to maintaining the airfield facilities, and the procedures for acquiring compliance assessment protocol-trained personnel. RFP ¶ M.4.1.2.

TekStar was rated unacceptable under this subfactor. The evaluators found that Tekstar failed to demonstrate that it possessed sufficient knowledge necessary for the operation and maintenance of all communications-electronics systems. The evaluators found that TekStar used outdated government documentation for airfield operations methodology, along with insufficient staffing and improper cross-utilization of personnel. The evaluators concluded that TekStar's overall operations and maintenance plan would work only if all requirements were identified and used to calculate personnel, logistics and spares, and operational costs and time management for support functions, but that TekStar had not addressed all requirements.

While TekStar admits that it identified outdated government documentation, it generally disagrees with the agency evaluation and again maintains that it developed its proposal to respond to the requirements as identified in section L of the RFP and not every individual PWS requirement. As previously stated, offerors were required to demonstrate their ability to satisfy the requirements of the RFP. As with its challenge to its evaluation under the management approach subfactor, TekStar has provided no basis for our Office to object to the evaluation under the technical approach subfactor. We think the record shows that the agency evaluators had reasonable concerns with TekStar's technical approach and that the agency reasonably concluded that TekStar's proposal was unacceptable under this subfactor.

Facilities Operation and Maintenance

For the facilities operation and maintenance subfactor under the mission capability factor, for power production/generation systems, offerors were to provide a maintenance schedule and an inspection plan describing preventive and corrective actions. For facilities, offerors were to describe how the recurring work plan would be developed and how work would be scheduled and controlled. Offerors were to describe how numerous functions would be accomplished, including:

Describe how HVAC systems will be operated and maintained, including plans for reducing energy consumption. Describe how sewage will be handled during sewage lagoon maintenance and/or failures. Provide a corrosion control plan, including procedures to

remove existing corrosion, prevent and repair future prevention training, fire safety inspections, and any maintenance or repairs to fire systems. Demonstrate how the snow removal workload will be integrated into the rest of the facilities operation and maintenance workload. Describe how utility systems will be operated and maintained. Describe how simultaneous projects will be conducted.

RFP ¶¶ L.4.2.3.3.1, L.4.2.3.3.2.

The RFP provided that offerors were to be evaluated on their ability and methodology for ensuring that power is maintained and available to meet the Eareckson mission and their ability and methodology for ensuring that the facilities' infrastructure is maintained.

TekStar was rated unacceptable for this subfactor. The evaluators found TekStar's proposed staffing for adequate operation and maintenance of the active facilities was insufficient. Additionally, TekStar failed to address several requirements for operating and maintaining the water distribution system, the sewer collection system, and the fire sprinkler system, and TekStar failed to provide required exterior paint and floor covering plans for the buildings.

TekStar concedes that it did not address the specific requirements identified by the agency evaluators, but argues that it was not required to do so by the solicitation. Protest attach. 2, at 5-12. Again, as quoted above, we believe the RFP was clear that offerors were to address the operation and maintenance of facilities, as well as the utility systems. TekStar simply failed to do so in its proposal.

Mission Support Services

For the mission support services subfactor under the mission capability factor, offerors were, among other things, to describe procedures for the inventory and control of government-furnished equipment and materials, to describe the procedures for housekeeping and how common areas and visitor rooms would be integrated into site workload, and to describe how billeting and food services would be provided. RFP ¶ L.4.2.3.4. Offerors were to be evaluated on their ability and methodology for ensuring the mission support services assets would be maintained and available to meet the mission requirements. RFP ¶ M.4.1.4.

The agency rated TekStar's proposal unacceptable under this subfactor. Some of the deficiencies and significant weaknesses cited by the evaluators included TekStar's failure to propose an ambulance for medical emergencies, its failure to address a requirement for a barge, its failure to address housekeeping or janitorial services, and its proposal of only one snow-removal vehicle.

TekStar states that it did not propose an ambulance because it intended to use the government-furnished ambulance identified in the RFP. However, it failed to explain its approach in its proposal. TekStar admits that it proposed only one multipurpose snow removal vehicle, but argues that the five dump trucks with snow-plow mounts and snow-sweeper mounts it did propose would be sufficient for snow removal. TekStar also admits that it did not address the requirement for a barge, but maintains that it did commit to transporting vehicles to the island and a barge was the only reasonable way to do so. Lastly, TekStar contends that it addressed housekeeping and janitorial services under another section of its proposal dealing with providing billeting services. However, as the agency points out, billeting services are separate from janitorial services and the ISSA specifically required offerors to provide custodial support for offices and common use areas twice weekly. GMD-ISSA at 10. As with the other subfactors, the agency reasonably concluded that TekStar simply did not adequately address in its proposal the mission support requirements, especially with respect to the requirement for an ambulance, a barge, housekeeping and janitorial services, and snow removal.

In sum, the record shows that TekStar submitted a materially deficient proposal that did not meaningfully address major portions of the PWS. Since under the terms of the RFP the protester was responsible for providing, within the four corners of its proposal, a full discussion of its mission capability approach, the protester must suffer the consequences of its failure to do so, that being the determination by the agency not to include its proposal in the competitive range because the protester failed to demonstrate in its proposal its understanding of the RFP requirements. See, Chek F. Tan & Co., B-277163, Sept. 8, 1997, 97-2 CPD ¶ 66 at 5. Based on the record, notwithstanding its lower-cost proposal, we believe the agency reasonably excluded TekStar's unacceptable proposal from the competitive range.

Finally, to the extent that TekStar objects that, as a result of not including its proposal in the competitive range, the agency had only one proposal in the competitive range, we point out that Federal Acquisition Regulation § 15.306(c)(1) states that a competitive range is generally to be comprised of all the most highly rated proposals. That provision permits an agency to exclude a proposal from the competitive range where it is determined to have no reasonable prospect of award, even where its exclusion will result in a competitive range of one proposal. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. On this

record, we have no basis to question the reasonableness of the agency's determination here to include only CMI's proposal in the competitive range.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² TekStar asserts that the agency improperly attributed the past performance of affiliated companies to CMI and that CMI itself did not have relevant past performance. The record shows that CMI's past performance evaluation was based on past performance information for the incumbent, a CMI affiliate, and CMI's major subcontractor's key personnel who have relevant experience. Past Performance Evaluation at 5. The agency noted that the management and employees of the incumbent, a CMI affiliate, will be [DELETED] and that CMI's major subcontractor, also a joint venture partner with the incumbent, will be [DELETED] of the requirement. Even if we agreed with the protester that CMI received a more favorable past performance rating than it was entitled to, there is nothing in the record that suggests that this would affect the competitive range determination.