



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Varicon International, Inc.; MVM, Inc.
File: B-255808; B-255808.2
Date: April 6, 1994

David B. Dempsey, Esq., and Sheila C. Stark, Esq., Akin, Gump, Strauss, Hauer & Feld, for Varicon International, Inc.; and Barbara S. Kinosky, Esq., Kinosky & Associates, for MVM, Inc., the protesters,
Timothy Sullivan, Esq., and Martin R. Fischer, Esq., Dykema Gossett, for MSM Security Services, Inc., an interested party.

Lieutenant Colonel Paul Pirog, and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
C. Douglas McArthur, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Extension of closing date for receipt of initial offers in order to accommodate two offerors who submitted late proposals was proper, even though extension was issued after closing date had passed, because an agency may properly extend its closing date at any time in order to enhance competition.
2. Protest by highest cost, lowest-rated offeror that agency's evaluation and consideration of late proposal prevented source selection official from conducting a proper cost/technical tradeoff is denied where the General Accounting Office concludes that agency properly considered proposal as timely and record supports agency's determination that the merits of the awardee's proposal were worth the additional proposed cost, while there were no benefits to the protester's proposal to justify award at its higher cost.

DECISION

Varicon International, Inc., and MVM, Inc. protest the award of a contract to MSM Security Services, Inc. under request for proposals No. F49682-93-R-0015, issued by the Department of the Air Force for personnel security investigations services. Both protesters contend that the agency improperly extended the date for receipt of initial proposals to accommodate the awardee's proposal, which had

not been received prior to that time; Varicon additionally challenges the evaluation and selection decision.

We deny the protests.

BACKGROUND

On July 12, 1993, the agency issued the solicitation for a cost-plus-award-fee contract for the management and conduct of personnel security investigations, and delivery of completed investigations to the Air Force. The solicitation provided for award to the responsible offeror whose proposal was most advantageous and of greatest value to the government after consideration of technical, management, cost, and past performance factors.

The solicitation stated that the management factor was more important than the technical factor, and that cost and past performance would be treated as "significant" general considerations in determining overall value to the government. The four equally weighted management subfactors included: (1) identification and allocation of management resources, (2) adequacy of the management plan, (3) adequacy of the transition plan, and (4) adequacy of the training plan. The three equally weighed technical subfactors were: (1) identification of tasks, resources, and methodologies required; (2) description of proposed procedures and processes required to properly support investigative activities; and (3) format/content of report of investigation/case review.

As issued on July 12, the solicitation required offerors to submit proposals by August 13 and contained no special instructions for the submission of offers. On July 19, the agency held a preproposal conference; at this conference, the contracting officer orally advised attendees that the agency would not accept handcarried proposals. On August 10, MSM, which had attended the preproposal conference, contacted the agency and was advised orally that its proposal would be considered timely as long as it was postmarked prior to the time set for receipt of initial offers.

On August 13 the date upon which initial offers were to be submitted, the agency received two proposals by the time set in the RFP. Subsequently, the agency learned that a third offeror had attempted to deliver a proposal by hand, and had not been permitted to do so. Also, the proposal of the incumbent contractor, MSM, arrived on August 16, since MSM had relied upon the contracting officer's oral advice and had not mailed its proposal until the August 13 due date. On August 18--5 days after initial proposals were due--the contracting officer issued an amendment extending the due

date for initial proposals until August 26. The agency explains that it extended the due date in order to accept the two proposals received after the initial due date.

After evaluating the four proposals, the agency included three of the offerors in the competitive range--the two protesters and MSM--and requested best and final offers (BAFO) by October 29.

The BAFO of MSM received the highest technical rating, with MVM second and Varicon third. MVM had proposed the lowest cost, with MSM second and Varicon considerably higher. Despite the lower cost of the MVM proposal, the agency had concerns about MVM's ability to obtain timely security clearances for its investigators, its use of separate systems for tracking the investigative process and for financial reporting, and adverse reviews of MVM's prior performance under a contract with the Federal Emergency Management Agency. By contrast, the evaluators found that MSM had submitted a detailed proposal that showed a comprehensive understanding of the processes and procedures necessary to accomplish the yearly investigation caseload in the time periods allotted. The evaluators also concluded that MSM's management approach displayed a thorough understanding of the numbers of investigators and levels of clearance required, as well as the capacity to allocate additional investigators to meet priority needs. Further, they gave high ratings to MSM's approach to automating tracking and billing. The agency also identified strengths in MSM's transition and training plans, and procedures for personnel selection and quality control that it concluded justified the additional cost of MSM's proposal over MVM's.

As a consequence, the agency determined that the technical superiority of MSM's proposal justified award at MSM's higher proposed cost, and awarded the contract to MSM on November 16. These protests followed.

MVM PROTEST

On January 21, 1994, MVM filed a protest contending that the agency improperly accepted late proposals and challenging the agency's technical and cost evaluation. On February 22, we dismissed as untimely MVM's contentions concerning the technical and cost evaluations.¹ Thus, MVM's only timely

¹Although MVM's January 21 protest was submitted within 10 days of the time it learned--as a result of the agency report provided to Varicon--that the agency had considered proposals submitted after the initial closing time, the

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issue is whether the agency properly accepted MSM's proposal by extending the due date for receipt of initial proposals.²

MVM essentially argues that the contracting officer has no authority to extend the proposal due date where there is no change in requirements and no basis for the extension apart from the desire to accommodate two offerors who failed to submit proposals on time. We have previously addressed this issue, and concluded that the Federal Acquisition Regulation does not prohibit the issuance of amendments extending the closing date for proposals after that date has passed; further, even where the extension is to accommodate only one offeror, such an extension is proper where it is done to enhance competition. Fort Biscuit Co., 71 Comp. Gen. 392 (1992), 92-1 CPD ¶ 440. MVM's arguments provide no basis for finding the agency's decision to extend the due date for receipt of proposals to be improper.

VARICON PROTEST

Varicon challenges the selection decision, essentially arguing that the agency failed to consider the relative merits of the three proposals. Varicon alleges that the record contains no evidence that the agency compared or weighted the differences between proposals, but merely assigned color ratings and made an award to the offeror with the highest color rating.

The proposals were rated using a color/adjectival rating scheme, in which the three proposals received ratings of blue (exceptional) and green (acceptable). The agency also

¹(...continued)

protest was filed approximately 2 months after MVM received a detailed debriefing on November 22. In response to our Office's request for information to establish the timeliness of the portion of its protest related to the technical and cost evaluation, MVM essentially conceded that it had been aware of the evaluation information for more than 2 months. Thus, we dismissed those portions of the protest but left open MVM's challenge to the agency's decision to consider late proposals. MVM, Inc., B-255808.2, Feb. 22, 1994.

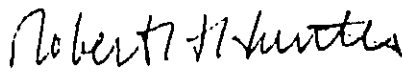
²Varicon also raised this issue in its protest. As discussed below, however, even if the protest were sustained on this ground and MSM's proposal eliminated from consideration, the record shows that MVM, not Varicon, would be in line for award. Accordingly, Varicon is not an interested party to maintain this ground of protest. See Kaiserslautern Maintenance Group, B-240067, Oct. 12, 1990, 90-2 CPD ¶ 288.

assigned plus or minus signs to signify that a proposal fell in the high or low range of the rating assigned. To the extent that Varicon protests the use of the color adjectival rating scheme, our Office has previously reviewed and approved the use of such schemes, where, as here, they are supported by a detailed narrative assessment of the strengths and weaknesses of offerors. Ferguson-Williams, Inc., 68 Comp. Gen. 25 (1988), 88-2 CPD ¶ 344.

With respect to Varicon's challenge to the selection decision, we review the record to determine whether the agency's judgments were reasonable and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or regulations. CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360. Contrary to the protester's assertions, the record contains a detailed explanation of the strengths and weaknesses of the three proposals that amply supports the higher technical ratings of the two lower cost proposals.

As noted above, the evaluators generally concluded that MSM had demonstrated a comprehensive understanding of the solicitation requirements and the resources necessary for accomplishment of the statement of work and identified specific strengths in MSM's approach to automating tracking and billing, its transition and training plans, personnel selection, and quality control. The evaluation established several bases for the relatively low score assigned to the Varicon proposal--weaknesses in the allocation of manning resources and quality control procedures and a lack of understanding of the work required--which the protester does not challenge. Similarly, while the source selection decision does not explicitly compare the MVM and Varicon proposals, the record contains ample support for the agency's conclusion that of the two, MVM submitted the superior proposal. Thus, although the selection memorandum addresses only the tradeoff between the two higher-rated, lower cost offerors, as discussed above it fully supports the agency's selection of MSM over MVM, as well as the agency's conclusion that MVM's proposal was superior to Varicon's. Under these circumstances, we see no basis to object to the award decision.

The protests are denied.


 Robert P. Murphy
 Acting General Counsel