



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: AHNTECH, Inc.

File: B-299806

Date: August 15, 2007

Leigh T. Hansson, Esq., and Gregory S. Jacobs, Esq., Reed Smith, LLP, for the protester.

Brent Curtis, Esq., Department of the Air Force, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the evaluation criteria.
 2. Agency did not rely on unstated evaluation criteria when it excluded protester's proposal from further consideration for award based on deficiencies found under one technical subfactor and where the solicitation expressly provided that proposals would be rejected in this circumstance.
-

DECISION

AHNTECH, Inc. protests the agency's evaluation of its proposal under request for proposals (RFP) No. F38604-07-R-C022-01, issued by the Department of the Air Force for base operations support (BOS) services to Manas Air Base (AB), Kyrgyzstan. AHNTECH alleges that the Air Force improperly evaluated AHNTECH's proposal as not technically acceptable under one of the evaluation subfactors; treated offerors unequally by attributing deficiencies to AHNTECH's proposal for concerns that were identified as weaknesses in more highly rated proposals; and relied on unstated evaluation criteria by excluding AHNTECH's proposal from further consideration because it was assessed a deficiency under one technical subfactor.

We deny the protest.

BACKGROUND

On March 24, 2007, the agency issued the RFP for the provision of BOS services, including dining services, at Manas AB, Kyrgyzstan.¹ The RFP is for performance-based, fixed-price services with indefinite-delivery/indefinite-quantity line items for a transition period, a 1-year base period, and four 1-year options. The RFP calls for award to be made “to the responsible offeror whose offer conforms to solicitation requirements, **is considered technically acceptable**, and will provide the best value to the Government considering past performance and price.” RFP at 93.

The performance work statement (PWS) describes the conditions under which the contract will be performed. Contractors are required to live and work “in the harsh environment of Kyrgyzstan, to include living off base and working in [tents].” RFP, PWS ¶ 1.4.3. Contractors will be “operating at a military location with a heightened level of threat,” and the “government assumes no security liabilities for Contractor personnel traveling off base.” *Id.* ¶ 1.4.4. The PWS further advises that “[p]ersonnel should anticipate working as effectively and efficiently as possible, but there may be extended periods of high pressure and stress which could negatively impact effectiveness and efficiency.” *Id.* ¶ 1.4.5.

The PWS notes that the “Manas AB Appropriated Fund food service operation . . . [is] dedicated to providing full meal service.” RFP, PWS ¶ 2.1.1, Program Overview. The government will place the order for the food to be served with the prime vendor, with the labor to be supplied by the contractor. Meals are to be provided at the main “Ala Too” and the smaller “Ops Town” dining facilities. The RFP calls for “contingency services” to augment the “around-the-clock” dining services: “The contractor will provide service during military exercises, emergencies, natural disasters and other contingency operations . . . by extending serving hours as requested.” *Id.* ¶ 2.1.13, Contingency Services.

The primary customers are “Essential Station Messing (ESM) recipients,” that is, “military and civilian personnel who are allotted rations in government dining facilities at the expense of the government.” *Id.* ¶ 2.1.2 Customer Eligibility. The agency states that it does not utilize cashiers in forward deployment situations such as Manas, Agency Report (AR), Contracting Officer’s Statement of Facts at 6, and that instead the contractor is required to track the number of meals served. In this regard, the RFP states that the government will provide and maintain Air Force (AF) Form 79, used for determining customer headcount, and that the forms are to “be placed on the cashier stands at the front entrance 24 hours a day.” *Id.* ¶ 2.1.3.15, Food Service Accounting. That form states that “[d]isclosure of [Social Security Number (SSN)] is voluntary. However, members otherwise entitled to Subsistence-

¹ Other operational areas include, for example, laundry services, transportation services, lodging and linen exchange services, and fitness center maintenance.

in-Kind will not be provided a meal at no cost without the SSN.” Protester’s Comments on AR, attach. 2, AF form 79 at 1. In addition, the definitions section of the RFP states that the term “food handlers” does not include “cashiers.” RFP app. A-1.

The RFP contains three evaluation factors--past performance, technical, and price. The RFP states that the “[w]ritten technical proposal[s] shall be specific, detailed, and clearly demonstrate that the offeror has a thorough understanding of the requirements for the accomplishment of this effort.” RFP at 91. The technical factor has three subfactors: subfactor 1, organizational structure and manpower; subfactor 2, quality control program; and subfactor 3, phase-in plan.

The RFP indicated that proposals were to be evaluated under each technical subfactor as either pass/technically acceptable (TA), neutral/reasonably susceptible of being made technically acceptable (RSTA), or fail/not technically acceptable (NTA). The RFP further provides that

if an offeror’s proposal demonstrates a failure to mention or meet a Government requirement, this is a deficiency in the offeror’s proposal. All proposals considered NTA will be eliminated from competition and will NOT be evaluated for past performance. The (3) technical sub-factors are considered equal in importance. The assessment criteria used will be understanding of the requirements/soundness of approach.

RFP at 95. The RFP further provides that

[o]fferors are required to meet all solicitation requirements, such as terms and conditions, representations and certifications, and technical requirements, in addition to those identified as factors and subfactors, to be eligible for award. Failure to comply with the terms and conditions of the solicitation may result in the offeror being removed from consideration for award.

Id. at 96. The RFP states that “[f]ailure of an offeror’s proposal to meet **ANY** given requirement of the RFP may result in the entire proposal being found to be unacceptable and eliminated from further competition.” Id. at 97.

The agency received six timely proposals, including those from the protester and the awardee, and conducted technical evaluations of all six. For subfactor 1, two proposals were rated RSTA, received no NTA ratings for the other technical subfactors, and were further considered for award. Four proposals, including AHNTECH’s, were rated NTA for subfactor 1 and were not further considered for award.

Offeror	TA/RSTA/NTA		
	Subfactor 1	Subfactor 2	Subfactor 3
Offeror A	NTA	NTA	NTA
Offeror B	NTA	RSTA	RSTA
Offeror C	NTA	RSTA	RSTA
AHNTECH	NTA	TA	RSTA
Offeror D	RSTA	TA	TA
Offeror E	RSTA	TA	TA

The source selection evaluation team (SSET) identified four deficiencies in AHNTECH’s proposal that it felt demonstrated a lack of understanding regarding the government’s requirements and justified the proposal’s NTA rating.

First, the proposal stated that “[b]reakfasts and lunches will be served during normal operations. To support contingency operations, AHNTECH will also provide dinner and midnight meals, as required.” AR, Tab 5, AHNTECH Proposal, vol. III, ¶ C.1.2, Food Preparation. The proposal also stated that “[d]uring contingency operations, our personnel will be augmented, as required, to ensure timely and efficient service for our customers.” *Id.* ¶ C.1.4, Service of Food. The agency inferred from this language that the protester was only offering dinner during contingency operations. The agency asserts that its reading of AHNTECH’s proposal was reinforced by proposed staffing levels that the agency maintains are clearly inadequate to accommodate the service of three meals a day.²

Second, the proposal stated that “[c]ashier personnel will not be assigned other duties during meal service periods to ensure timely service to our customers. In addition, our cashiers will remain on duty until fifteen minutes after the end of the serving period to collect cash or to verify identification numbers from patrons.” *Id.* ¶ C.1.5, Cashier Services. The proposal further stated that, when a customer comes to the cash register, the cashier will identify and record the menu items for sale, obtain the customer’s signature, collect payment and make change, and provide a cash register receipt. The proposal included procedures for tracking funds throughout change of shifts and the general safekeeping of funds. The agency here

² The agency report provides additional explanations as to why the protester was assessed the four deficiencies for subfactor 1. Although the explanation for the evaluation provided by the agency in the report is more detailed than the evaluation summaries in the contemporaneous record, we conclude that they are consistent with the contemporaneous evaluation and the protester’s proposal. Therefore we do not conclude, as AHNTECH suggests we should, that the agency has provided improper post-hoc information that should be excluded from the record. NCR Gov’t Sys. LLC, B-297959, B-297959.2, May 12, 2006, 2006 CPD ¶ 82 at 10 n.5.

read the protester's proposal as providing services not stated as a requirement in the PWS, and not needed. The agency determined that offering "extraneous" and "unnecessary" services indicated both "a lack of understanding of the [Dining Facilities Administration Center (DFAC)] requirement and not meeting the DFAC requirement." Agency Rebuttal, Decl. of Contracting Officer, ¶ 3.

Third, the proposal stated that the monthly "inventory will be reconciled against the [Air Force's Services Information Management System (SIMS)] count and any variance will be reported, in writing, to the government representative." AR, Tab 5, AHNTECH Proposal, vol. III, ¶ C.1.8.2, Inventory Control. The RFP did not call for the offeror to supply SIMS or any other software. The SSET expressed concern that the protester would propose what the SSET regarded as obsolete software, whose use was phased out by the agency in 2002. Agency Rebuttal, Decl. of Contracting Officer, ¶ 4. In addition, the SIMS software, no longer available at Manas AB, would be incompatible with the software by which the agency is linked to the prime vendor. The agency evaluation concluded that providing this inventory service "with an incompatible antiquated software [reflected] both a lack of understanding of the DFAC requirement and not meeting the DFAC requirement." Id.

Lastly, the proposal stated that an "Administrative Clerk will be assigned to [the front desk] function and will also be responsible for: inventory control and purchasing for the lodging and dining facilities. The Clerk will utilize the Subsistence Total Order and Receipt Electronic Systems (STORES) program for all subsistence purchases." AR, Tab 5, AHNTECH Proposal, vol. III, ¶ C.3.1, Front Desk. As noted above, the government, not the contractor, was to place the subsistence order. The SSET concluded that "this provision purporting to provide an extraneous service . . . [showed] both a lack of understanding of the DFAC requirement and not meeting the DFAC requirement." Agency Rebuttal, Decl. of Contracting Officer, ¶ 5.

While the SSET noted no deficiencies in the protester's proposal for subfactors 2 or 3, it did identify weaknesses under subfactors 1 and 3. Those weaknesses included: the failure to state the personnel, management and organization needed to meet the requirements for the drop-arm barrier maintenance and washer and dryer maintenance; insufficient staffing in the dining facility function; a lack of clear demonstration of the qualifications of key personnel; failure to make mention of the hoods and ducts requirement; and an unclear understanding of the Ops Town DFAC site manager position.³ AR, Tab 7, Source Selection Decision Memorandum, at 14.

³ The record shows that the protester had, in fact, addressed the personnel, management, and organization relating to the drop-arm barrier maintenance and washer and dryer maintenance requirements, as well as the hoods and ducts requirement. AR, Tab 5, AHNTECH Proposal, vol. III, ¶¶ C.2.12, Drop-Arm Barriers Maintenance; C.2.3, Washer/Dryer Repair and Maintenance; C.2.2, Hoods and Ducts. The protester was not prejudiced by the agency's evaluation error here, however,
(continued...)

The proposals of offerors D and E, which were rated RSTA for subfactor 1, had no deficiencies for that subfactor and shared two weaknesses. Of both of their proposals, the SSET said that they were “not clear on the proposed manning and the quantity of personnel assigned” and that the SSET would like to know how those two firms would “increase [the] manning if needed.” *Id.* at 15, 19. The SSET identified one further weakness in offeror E’s proposal, requesting that offeror E “clarify the DFAC Maintenance requirement personnel.” *Id.* at 19.

DISCUSSION

The agency maintains that the four deficiencies in the protester’s proposal—the failure to offer dinner (except as a contingency option) and the three defects that reflected a lack of understanding of the requirements—rendered the proposal NTA. The protester challenges each of these four findings of deficiencies.

An offeror must submit a proposal that is adequately written and that affirmatively establishes its merits or run the risk of having the proposal rejected as technically unacceptable. *Source AV, Inc.*, B-234521, June 20, 1989, 89-1 CPD ¶ 578 at 3. In reviewing whether a proposal was properly rejected as technically unacceptable for informational deficiencies, we examine the record to determine, among other things, whether the RFP called for detailed information and the nature of the informational deficiencies, for example, whether they tended to show that the offeror did not understand what it would be required to do under the contract. *BioClean Med. Sys., Inc.*, B-239906, Aug. 17, 1990, 90-2 CPD ¶ 142 at 3; *DRT Assocs., Inc.*, B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47 at 3. The evaluation of technical proposals is a matter within the discretion of the contracting agency. *Marine Animal Prods. Int’l, Inc.*, B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 9. We will not reevaluate a proposal but, rather, will consider whether the agency’s evaluation was reasonable and consistent with the evaluation scheme in the RFP. *Communications Int’l, Inc.*, B-238810, B-238810.2, July 3, 1990, 90-2 CPD ¶ 3 at 3.

The RFP here clearly states that the “assessment criteria used will be understanding the requirement/soundness of approach,” and the agency maintains that the aspects of the protester’s proposal that it identified as deficiencies indicate a failure to address a requirement or a lack of understanding of the requirement. The protester disagrees, arguing that, in each case, the proposal defects identified by the agency cannot reasonably be considered deficiencies because the protester either obligated itself to meet the government’s requirements or was offering to supplement the RFP

(...continued)

given that proposals were rendered NTA based on assessed deficiencies, not weaknesses. See *Kearney & Co.*, B-298436.2, Oct. 4, 2006, 2006 CPD ¶ 149 at 3-4.

requirements. As discussed below, the record shows that the agency reasonably concluded that AHNTECH's proposal had deficiencies in the four areas identified.

Evening Meals

The protester disputes the agency's reading of AHNTECH's proposal as offering to supply dinner on a contingency basis only, asserting that the "plain meaning of Ahntech's statement that other meals will be provided 'as required' should have been sufficient to overcome any question regarding whether [AHNTECH] will meet the DFAC meal requirements," Protest at 6, and that use of the phrase "as required" obligated the protester to meet the terms of the RFP. The agency argues that the protester, not the agency, created a distinction between breakfasts and lunches that "will be served during normal operations," and dinner and midnight meals that will be provided "to support contingency operations. . . as required." Together with a staffing level that the agency asserts would not have supported full meal service for the evening meals, the agency argues that it reasonably concluded from the language in the protester's proposal that it was offering limited evening meal service. We agree with the agency.

The protester could easily have worded its proposal so as to make clear that it offered breakfast, lunch, and dinner and midnight meals during normal operating hours, and dinner and midnight meals as required by contingency operations. Instead, the protester's proposal offered to provide, without qualification, breakfasts and lunches, and "[t]o support contingency operations . . . [to] provide dinner and midnight meals, as required." Moreover, the agency concluded that AHNTECH's proposed staffing levels were clearly inadequate to accommodate the service of three meals a day. Based on the record here, we think that the agency reasonably concluded that the protester's proposal failed to clearly offer full evening meal service.

Because the agency cites as support for its reading of the proposal the fact that the agency considered the proposed staffing to be inadequate, and because the agency assessed weaknesses, not deficiencies, for staff shortcomings, the protester argues that on this issue the agency should have assessed the protester's proposal a weakness rather than a deficiency. We disagree. As discussed above, the agency noted a deficiency in AHNTECH's proposal not, as the protester argues, because the staffing levels were judged insufficient, but because the agency considered the inadequate staffing levels, together with the proposal language, an indication that the protester misunderstood the scope of food service required under the RFP and failed to offer all of the required food services. The population that the contractor will serve is dependent on the base dining services for meals, and is entitled to receive them. The agency thus reasonably determined that a failure to clearly offer full meal service to them warranted the assessment of a deficiency against the protester's proposal.

Understanding the Requirements

The protester asserts that the other three elements of its proposal identified as deficiencies—use of cashiers, obsolete software, and the contractor placing the food order with the prime vendor—merely constitute offers to supplement the requirements of the RFP. As discussed below, we think that the agency reasonably concluded that these areas of the protester’s proposal reflected a lack of understanding of the RFP’s requirements and constituted deficiencies.

With respect to the issue of cashiers, the protester argues that the reference in the PWS to cashier stands—as the location on which the headcount forms will be placed—and the definition of food handlers as excluding cashiers “demonstrate that the inclusion of Cashiers as a labor category does not indicate a lack of understanding regarding DFAC requirements.” Protester’s Comments on AR at 9. The protester also argues that the language in AF Form 79 (quoted above) indicates that some customers in fact are paying for meals. However, the fact that customers will not be served free meals without disclosing their SSNs does not necessarily mean, as the protester has concluded, that those customers would then have the option of paying. In addition, as noted above, the agency has asserted, without challenge, that it does not utilize cashiers in forward deployment situations such as Manas and that no cashiers were in evidence during the site inspection, which the protester attended. In any event, the protester’s proposal tasks cashiers with taking payment and making change, and suggests that the cashiers will do this for every customer. The proposal also includes processes for tracking money collected from customers. These functions are unnecessary and not called for in the PWS, which makes clear that the customers in the dining halls are entitled to the dining services, without charge, and the contractor’s only responsibility is to ensure that headcount forms are available and accurately filled out. In our view, the agency reasonably concluded that the offer of cashiers to serve in a cashless operation reflected a lack of understanding of the RFP requirements.

With respect to the software, the protester’s proposal, the agency argues, offered an obsolete software system, the use of which would have hindered the agency’s ability to use that inventory to place food orders efficiently. Even if the SIMS software it proposed is outdated, the protester argues, the agency improperly deemed the offer to use SIMS a deficiency without showing “that any particular system is required and Ahntech failed to propose its use.” Protester’s Comments on AR at 10. Moreover, AHNTECH asserts that it “could have easily developed a revised information management system or purchased a commercially-available system with no hindrance to contract performance or cost.” *Id.* In our view, the protester’s argument ignores the agency’s central concern—that proposing outdated and incompatible software at a minimum reflects a lack of familiarity with the performance requirements under the RFP.

Lastly, AHNTECH challenges the agency's assessment of a deficiency for AHNTECH's proposed use of a lodging clerk for "inventory control and purchasing for the lodging and dining facilities." While the protester asserts that even if it assigned work to contract personnel that the PWS assigns to the government, "there has been no allegation that Ahntech failed to address any requirement in the Solicitation," *id.*, we agree with the agency that the assignment of the food purchasing function to the contractor clearly represents a lack of understanding of the requirements.

We find unpersuasive the protester's argument that each of these three defects results from the protester's supplementing the RFP requirements, and that therefore the proposal shortcomings do not meet what the protester asserts is the RFP's only definition of deficiency: a proposal that demonstrates a failure to mention or meet a government requirement. The evaluation criterion was "understanding the requirements/soundness of approach." As the PWS makes clear, conditions on the ground at the site of contract performance will be harsh. Contract personnel will be working in tents in a remote location, and the customers of the dining facilities will require around-the-clock food service, with the food provided by the government at no charge. A high percentage of those meals will be consumed outside of normal operating hours, which will include scheduled times for breakfast, lunch, and dinner. The protester's proposal, which might be appropriate for more routine dining services procurements, does not reflect an understanding of the conditions at Manas AB. Even when performance risk is not specifically listed in the solicitation as an evaluation criterion, an agency may always consider risk that arises from an offeror's demonstrated lack of understanding. *Ridoc Enter., Inc.*, B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 7. On the record here, we conclude that the agency reasonably found deficiencies in the protester's proposal under subfactor 1, based on the protester's failure to offer evening meals and to otherwise demonstrate an understanding of the requirements of the RFP.

The protester argues that because the deficiencies in its proposal are similar to weaknesses in the proposals that were rated RSTA under subfactor 1, AHNTECH's proposal also should have been rated RSTA under subfactor 1. The agency's failure to rate the protester's proposal RSTA, the protester argues, reflects unequal treatment of offerors. We disagree. The record supports the finding that the weaknesses in the proposals from offerors D and E are similar in nature not to the deficiencies in AHNTECH's proposal, but to the weaknesses. Offeror D's and offeror E's proposals shared weaknesses concerned staffing levels--the agency sought clarity on the level of staffing and the means to increase staffing if necessary--as did the weakness unique to offeror E--the need for clarification of the DFAC personnel maintenance requirement. These weaknesses are similar in nature to the weaknesses identified in AHNTECH's proposal, specifically: the failure to state the personnel for the drop-arm barrier maintenance requirement; insufficient staffing in the dining facility function; a lack of clear demonstration of the qualifications of key personnel; and an unclear understanding of the Ops Town DFAC site manager

position. Each of these weaknesses involved personnel qualifications or other staffing issues. None of these weaknesses reflects the potential that an offeror has failed to understand the essential elements of any required service. Given the nature of all of these concerns, it was reasonable for the agency to identify each of them as weaknesses in the respective proposals, and, as a result, we see no basis on which to conclude that the agency engaged in unequal treatment of the offerors.

The protester also asserts that the agency used unstated evaluation criteria to find AHNTECH's entire proposal technically unacceptable based on an assessed deficiency under subfactor 1, because "[n]owhere in the solicitation was it established, implied, or stated that the evaluation of one subfactor as NTA would or could render the entire proposal as unacceptable." Protest at 7. Rather, the protester argues that because "all subfactors were to be evaluated as equal in importance, there was no indication in the Solicitation that the evaluation of any one subfactor as NTA would or could then render the entire proposal as NTA." *Id.* at 8. Moreover, the protester argues that even if the agency properly found AHNTECH's proposal NTA for the one operational area of DFAC, that was but one of 14 operational areas included in the RFP. Because the RFP does not provide for any operational area to assume a higher level of importance than any other, the protester asserts that the emphasis placed on the DFAC operational approach amounts to application of an unstated evaluation criterion. *Id.* at 7.

An agency may properly find that a deficiency in one non-price evaluation factor is critical enough to render an entire proposal technically unacceptable. *Pacifica Servs., Inc.*, B-280921, Dec. 7, 1998, 98-2 CPD ¶ 137 at 8; *All State Boiler, Inc.*, B-277362, Oct. 3, 1997, 97-2 CPD ¶ 144 at 6. Likewise, a proposal that contains numerous material deficiencies which indicate that the offeror does not understand the solicitation requirements may properly found to be unacceptable. *SWR, Inc.*, B-286229, B-286299.2, Dec. 5, 2000, 2000 CPD ¶ 196 at 6.

The protester's claim is essentially summed up in its reading of this RFP statement (quoted above without the protester's emphasis): ". . . if an offeror's **proposal** [emphasis added] demonstrates a failure to mention or meet a Government requirement, this is a deficiency in the offeror's proposal. All **proposals** [emphasis added] considered NTA will be eliminated from competition and will NOT be evaluated for past performance . . ." Protest at 8. According to the protester, every aspect of a proposal would need to be rated NTA before the agency could properly eliminate it from further competition. This reading is wholly inconsistent with the RFP's explicit statement that the failure of an offeror's proposal to meet "**ANY**" requirement of the RFP could result in the proposal's elimination from the competition. Given that the RFP included a clear statement that a proposal's failure to meet any requirement could result in its exclusion from further competition, we

find that the agency reasonably excluded the protester's proposal from further competition after finding it NTA for subfactor 1.

The protest is denied.

Gary L. Kepplinger
General Counsel