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**Comptroller General
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Decision

Matter of: LifeCare, Inc.

File: B-291672; B-291672.2

Date: February 20, 2003

E. Sanderson Hoe, Esq., and Alison L. Doyle, Esq., McKenna Long & Aldridge, for the protester.

Edward N. Ramras, Esq., U.S. Marine Corps, for the agency.

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DIGEST

Agency reasonably rejected protester's proposal as technically unacceptable where solicitation required that proposals "shall contain detailed information that addresses and responds to the evaluations factors," the solicitation listed the adequacy of offerors' proposed management plans and marketing plans as evaluation factors, and protester's proposal contained neither a management plan nor a marketing plan.

DECISION

LifeCare, Inc. protests the U.S. Marine Corps's award of a federal supply schedule (FSS) task order to Ceridian Corporation pursuant to a request for proposals (RFP) to provide various employee assistance services for Marine Corps members and their families. LifeCare protests that the agency improperly evaluated LifeCare's proposal as technically unacceptable.

We deny the protest.

BACKGROUND

In August 2002, the U.S. Marine Corps identified a need to provide on-call employee assistance program (EAP) services for service members and their families. On September 10, 2002, the U.S. Marine Corps issued a solicitation to three FSS vendors, including LifeCare and Ceridian, seeking proposals to provide on-demand EAP services, 24 hours a day, 7 days a week, via toll-free telephone lines and the Internet.

Agency Report, Tab 4.¹ The performance work statement (PWS), which was included as part of the solicitation, specified various required EAP services, including the provision of: parenting and child care information,² education services,³ financial information and counseling,⁴ legal information and referrals,⁵ elder care information,⁶ “warm hand off” to TRICARE,⁷ library services,⁸ and “everyday” information.⁹ Agency Report, Tab 4, at 15-17.

The solicitation contemplated award of a task order for a 1-year base period with four 1-year option periods, and required each FSS vendor to submit separate technical and price proposals. The solicitation further provided that proposals

¹ The RFP explained that, in light of the current state of heightened security in which service members are deployed around the world and a significant portion of members reside outside of military installations, there is an ongoing need to provide additional support for members and their families. The EAP services being acquired here are intended to reflect a reciprocal supporting relationship between the military and service members and their families. Agency Report, Tab 4, at 13. The agency further states: “This is an Office of the Secretary of Defense demonstration project and the Marines Corps is the test site for the successful outcome of the project for implementation military-wide.” Agency Report, Tab 3, at 3.

² For example, information regarding before- and after-school care and summer camps, as well as identification of resources to address child development, child safety and parenting skills. Agency Report, Tab 4, at 15.

³ For example, information regarding school problems and study habits, as well as coaching through the college application and selection process. Id.

⁴ For example, information regarding credit management, check writing, home buying and retirement planning, and tax preparation. Agency Report, Tab 4, at 16.

⁵ For example, information regarding family matters, landlord/tenant issues, and debtor/creditor issues. Id.

⁶ For example, information regarding the dependency determination process, and referrals to in-home services such as home-delivered meals and hospice services. Id.

⁷ For example, a three-way call initiated by contractor personnel connecting the user with the appropriate TRICARE provider. Agency Report, Tab 4, at 17.

⁸ For example, establishment of a library and mail/distribution center to provide books, tapes, CDs and videos on life issues to military members and their families. Agency Report, Tab 4, at 16.

⁹ For example, information regarding transportation, consumer issues, pets, and pet care. Id.

would be evaluated on the basis of technical capability, past performance, and price, stating that technical and past performance factors combined were more important than price, and advising offerors that award would be based on the proposal considered “most advantageous to the Government, price and other factors considered.” Agency Report, Tab 4, at 4.

Regarding preparation of technical proposals, the solicitation directed:

The technical proposal shall contain detailed information that addresses and responds to the evaluation factors for Technical Capabilities and Past Performance.

Agency Report, Tab 4, at 2.

The solicitation listed nine technical evaluation factors, including the following two:

d. Adequacy of management plan and organizational structure to accomplish the services involved in the PWS^{10]}

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h. Proven ability to market this program to the military and spouse population, including reservists[,] as demonstrated by a marketing plan as a part of the submission.

Agency Report, Tab 4, at 4.¹¹

Both LifeCare and Ceridian submitted proposals by the September 19, 2002 closing date.¹² The agency first evaluated the technical proposals to determine technical

¹⁰ In addition, without specific reference to the evaluation factors, the solicitation separately stated: “The technical proposal shall include . . . [a] plan that demonstrates the offeror’s capability to serve [the specified population].” Agency Report, Tab 4, at 2-3.

¹¹ In addition to the two evaluation factors quoted above, the solicitation provided for evaluation of: demonstrated ability to provide EAP services to large commercial/government clients; qualifications of staff, including EAP experience; corporate experience providing call center support; demonstrated ability to increase staffing in the event of mobilization; capability of automated systems; ability to handle client base in excess of 200,000 people; and demonstrated capability to develop an appropriate web site. Id.

¹² The third FSS vendor did not respond to the solicitation.

acceptability--that is, basic compliance with the requirements identified under each evaluation factor.¹³ The agency found Ceridian's proposal to be acceptable with regard to all evaluation factors. In contrast, the agency found LifeCare's technical proposal to be unacceptable under four of the nine evaluation factors, including the two factors quoted above that required submission of management and marketing plans.¹⁴ Agency Report, Tab 5, at 1-2.

The agency did not conduct discussions with either offeror, concluding on the basis of its initial evaluation that Ceridian's proposal was most advantageous to the government. A task order was subsequently awarded to Ceridian. This protest followed.

DISCUSSION

LifeCare protests that the agency improperly evaluated LifeCare's proposal as unacceptable, arguing there was no reasonable basis for the agency to conclude that LifeCare's proposal failed to provide the information required by the solicitation. We disagree.¹⁵

¹³ LifeCare maintains that the agency's acceptability/unacceptability evaluation, rather than a qualitative assessment, was improper because the solicitation advised offerors that award would be based on the proposal considered "most advantageous to the government, price and other factors considered." Agency Report, Tab 4, at 4. In light of the record here which, as discussed below, adequately supports the agency's conclusion that LifeCare's proposal failed to comply with the solicitation requirements, there was no point in performing a qualitative assessment of the two proposals and/or a price/technical tradeoff, since it is well settled that a technically unacceptable proposal cannot be considered for award. See, e.g., EMSA Ltd. Partnership, B-254900.4, July 26, 1994, 94-2 CPD ¶ 43 at 5.

¹⁴ The agency also concluded that LifeCare's proposal failed to properly discuss the EAP experience of its staff, and failed to demonstrate how LifeCare would increase staffing in the event of mobilization. Id.

¹⁵ As a preliminary matter, we note that where, as here, an agency solicits FSS vendor responses and provides for a technical evaluation and price/technical tradeoff--that is, uses an approach very similar to a negotiated procurement, our Office will review the agency's actions, if challenged pursuant to our bid protest regulations, to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since that agency is responsible for defining its needs and determining the best method of accommodating them, and must bear the results of a defective evaluation. Orion Research, Inc., B-253786, Oct. 21, 1993, 93-2 CPD ¶ 242 at 3. Where an agency's technical evaluation is challenged, our Office will not independently reevaluate the proposals; rather, we will examine the evaluation to ensure that it was reasonable and consistent with the stated evaluation factors and did not violate procurements statute or regulations. Integrity Private Sec. Servs., Inc., B-255172, Dec. 17, 1993, 93-2 CPD ¶ 332 at 3. A protester's mere disagreement with the agency's conclusions does not render the conclusions unreasonable. Id.

As noted above, the solicitation directed that each technical proposal "shall contain detailed information that addresses and responds to the evaluation factors," and the solicitation specifically included "adequacy of management plan" as an evaluation factor. Agency Report, Tab 4, at 2, 4. Here, in evaluating LifeCare's proposal under this factor, the agency stated: "No management plan was provided. The organizational structure included individuals, biographies, and qualifications, however, we were not able to clearly identify the plan to manage the process." Agency Report, Tab 5, at 2.

Based on our review of LifeCare's proposal, we find no basis to criticize the agency's evaluation. Despite the solicitation's explicit provisions regarding submission of a management plan, the portion of LifeCare's proposal purporting to address that requirement contained only a discussion of LifeCare's corporate background and "biographies" of various LifeCare staff members. Agency Report, Tab 11, at 50-57. More specifically, this portion of the proposal contained biographies of [deleted] LifeCare managers—[deleted] of whom were identified as "executives who oversee the key departments at LifeCare"; yet nothing in the biographies of these [deleted] executives indicates any involvement with the task order at issue here. Agency Report, Tab 11, at 51-55. Further, while the biographies of the remaining [deleted] managers discuss their prior activities and qualifications, virtually no information is provided regarding the manner in which the multiple performance requirements of this solicitation will be managed. Specifically, the biographies of the [deleted] managers contain general assertions that they [deleted] or [deleted], but contain virtually no descriptions of any particular planned activities or interactions. Agency Report, Tab 11, at 55-57. Similarly, the proposal contains no organizational or staffing chart that focuses on performing the requirements of this particular contract.¹⁶

¹⁶ The proposal contains, instead, LifeCare's corporate organizational chart, which contains no information addressing the performance of this contract. Agency Report, Tab 11, at 51.

A proposal that fails to satisfy a material solicitation requirement cannot be considered for an award. Techseco, Inc., B-284949, June 19, 2000, 2000 CPD 105 at 3. Here, based on our review of LifeCare's proposal, we find no basis to question the agency's conclusion that LifeCare's proposal did not contain an adequate management plan (if it can be said to have a management plan at all). Further, we believe there can be no meaningful dispute that a management plan regarding performance of the required EAP services constituted a material solicitation requirement. Accordingly, the agency reasonably rejected LifeCare's proposal for failing to meet this requirement.

The solicitation also provided that proposals would be evaluated with regard to the offeror's ability to market the EAP program "as demonstrated by a marketing plan as part of the [proposal] submission." Agency Report, Tab 4, at 4.

The agency evaluated LifeCare's proposal as unacceptable with regard to this requirement on the basis that LifeCare did not propose any particular marketing plan, that is, specific marketing activities. Agency Report, Tab 5, at 2. Rather, LifeCare's proposal merely referenced various marketing activities in which it had previously engaged, and stated: [deleted]. Agency Report, Tab 11, at 67.

Referencing a portion of the solicitation's PWS that discusses the contractor's ongoing responsibility to develop and implement its marketing campaign plan during contract performance, Agency Report, Tab 4, at 20-21, LifeCare maintains that "[t]he PWS . . . clearly contemplated development of the [marketing] plan during contract performance." Protest at 8. Accordingly, LifeCare argues that no plan for specific marketing activities was required to be provided with its proposal and the information regarding LifeCare's prior marketing activities should have been considered sufficient to meet the solicitation requirement. We disagree.

As noted above, the solicitation specifically required that offerors include a marketing plan "as part of the [proposal] submission" in order to demonstrate the offeror's ability and intent with regard to marketing activities. Agency Report, Tab 4, at 4. The fact that the PWS contemplates that the contractor will engage in continuing efforts to develop and implement such a plan during contract performance does not negate or otherwise eliminate the clear solicitation requirement that the plan be presented, initially, within the offeror's proposal for the agency's evaluation. The effect of LifeCare's interpretation of the solicitation is to leave the agency with no basis to assess the likely effectiveness of the marketing efforts each offeror intends to employ until after source selection has occurred. On the record here, we find no basis to question the agency's evaluation of LifeCare's proposal as unacceptable with regard to the requirement to submit a marketing plan.

Finally, LifeCare protests that the agency failed to properly consider LifeCare's proposed price, which LifeCare maintains was approximately [deleted] percent lower than Ceridian's price.¹⁷

A technically unacceptable proposal cannot be considered for award; accordingly, any purported cost savings flowing from the offeror's stated price regarding its technically unacceptable proposal are irrelevant. See EMSA Ltd. Partnership, B-254900.4, July 26, 1994, 94-2 CPD ¶ 43; Color Ad Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154. Here, because the agency reasonably evaluated LifeCare's proposal as technically unacceptable, there was no need for the agency to give further consideration to LifeCare's proposed price. Accordingly, none of LifeCare's complaints regarding the manner in which its price proposal was, or was not considered, provide any basis for sustaining its protest.¹⁸

The protest is denied.

Anthony H. Gamboa
General Counsel

¹⁷ Based on our review of the record it is not clear what price LifeCare proposed. Although the solicitation required that price proposals must include "a spreadsheet . . . that identifies the proposed labor categories, hours and rates for the Base period . . . and all option years," Agency Report, Tab 4, at 3, LifeCare's proposal contained only two price spreadsheets – one labeled "Base Period (Year One)," and one labeled "Base Period (Year Two)." Agency Report, Tab 11a, at 3-4. LifeCare now asserts that the spreadsheet labeled "Base Period (Year Two)" was intended to apply to each of the four 1-year option periods. The agency argues that this intent was not evident from the face of the proposal and that the agency could reasonably conclude that LifeCare had not offered to provide option-year services. Agency Supplemental Report, Jan. 21, 2003, at 2. As discussed above, the agency reasonably evaluated LifeCare's proposal as technically unacceptable; accordingly, we need not resolve this issue.

¹⁸ In filing and pursuing this protest, LifeCare has presented additional arguments regarding various alleged procurement flaws. We have considered all of LifeCare's arguments and find no basis for sustaining its protest.