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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Telecommunication Support Services, Inc.

File: B-407305

Date: December 4, 2012

Dennis Fritz for the protester.

Anne C. Tinoco, Esq., and Tracy McGowan, Esq., Maryland Procurement Office, for the agency.

Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that protester's proposal was unacceptable where the protester failed to submit an adequately written technical proposal in accordance with the solicitation's instructions.

DECISION

Telecommunication Support Services, Inc. (TSS), of Melbourne, Florida, protests the award of a contract to Tensley Consulting, Inc., of Annapolis, Maryland, by the Maryland Procurement Office (MPO) under request for proposals (RFP) No. H98230-12-R-0010 for software and hardware engineering support services and system support functions for the agency's terrestrial radio frequency mission. TSS contends that the agency unreasonably evaluated its technical proposal.

We deny the protest.

The solicitation, issued on February 3, 2012, contemplated the award of a time and materials contract for support services for a base year plus four option years. Award was to be made to the lowest-priced, technically acceptable offeror. A proposal's technical acceptability would be based upon the evaluation of both management and technical factors. The RFP, as amended, divided the management factor into four subfactors and the technical factor into ten subfactors. The RFP explained that to be acceptable, a proposal may not have an unacceptable rating under any management or technical subfactor.

Offerors were given detailed information in the RFP's proposal preparation instructions regarding proposal content and format. The RFP cautioned that non-conformance with the instructions provided in the RFP may result in an unacceptable rating. As relevant here, the RFP instructed offerors to address tower rigging, antenna rigging and construction under subfactor seven of the technical factor. The solicitation stated that the agency's evaluation of this subfactor would consider whether:

- (a) The Offeror's proposal describes knowledge of and technical competency in all safety aspects of tower rigging.
- (b) The Offeror's proposal describes knowledge of and technical competency in all safety aspects of general construction practices.
- (c) The Offeror's proposal certifies that [] at least three (3) personnel are certified to climb to a height of 300 feet.
- (d) The Offeror's proposal demonstrates an understanding of the ANSI [American National Standards Institute] and OSHA [Occupational Safety and Health Administration] standards.

RFP, Proposal Evaluation Criteria (Mar. 12, 2012), at 4.

On March 30, the agency received six proposals in response to the RFP, including proposals from TSS and Tensley. TSS's proposal was rated technically unacceptable for failing to adequately address the tower rigging, antenna rigging and construction subfactor in its technical proposal. On August 7, the agency notified TSS that an award had been made to Tensley as the low-priced technically acceptable offeror.

On August 10, TSS filed an agency-level protest contending that the agency should have rated its technical proposal acceptable because TSS's proposal fully addressed the technical subfactor criteria, and should have awarded TSS the contract as the lowest-priced offeror. The agency denied TSS's agency-level protest on August 31. TSS filed its protest with our Office on September 10.

In its protest, TSS challenges the agency's evaluation of its proposal. TSS contends that its offer addressed the requirements of the RFP and should have been evaluated as acceptable. TSS argues that the agency failed to fully consider portions of TSS's proposal in evaluating technical subfactor seven--tower rigging, antenna rigging and construction. Specifically, TSS asserts that the subfactor seven criteria were addressed within the management portion of its proposal and in other technical subfactor responses.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. The Keniya Group, Inc.; Academy Solutions Group, LLC, B-406314, B-406314.2, Apr. 11, 2012, 2012 CPD ¶ 141 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. James Constr., B-402429, Apr. 21, 2010, 2010 CPD ¶ 98 at 3.

Here, the RFP made clear that proposals must be submitted in accordance with the proposal preparation instructions and notified offerors that non-conformance with the instructions may result in an unacceptable proposal evaluation. The RFP instructions included a table which displayed how offerors were to present their management and technical approaches. The response to the tower rigging, antenna rigging and construction subfactor was to be presented under the technical approach factor. The instructions also advised offerors that "each document and major section within each volume shall stand alone and shall contain all information necessary to evaluate that portion of the response, including complete coverage of and responses to relevant RFP instructions." RFP, Proposal Preparation Instructions, at 4.

As required by the RFP, the agency's evaluation team restricted its evaluation of TSS's technical factor to the technical section of its proposal. The agency determined that TSS's technical subfactor seven response failed to adequately describe its knowledge of and technical competency in all safety aspects of tower rigging; its knowledge of a technical competency in all safety aspects of general construction practices; certify that it has at least three personnel are certified to climb to a height of 300 feet; and demonstrate an understanding of the ANSI and OSHA standards. While TSS asserts that the agency should have considered information contained within its response to the management approach factor, the agency was not required to adapt its evaluation to comply with TSS's submission, or go in search of information that TSS omitted or failed adequately to present as instructed by the RFP. James Constr., supra, at 5; Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 3. Rather, it is an offeror's responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical approach in accordance with the evaluation terms of the solicitation. Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558, et al., Nov. 22, 2011, 2011 CPD ¶ 257 at 4. TSS acted at its own peril when it chose not to submit the requested data within the appropriate portion of its proposal. Id.

Moreover, had the agency evaluated technical subfactor seven by considering information contained within the management approach portion of its proposal, the

agency would have provided a benefit to TSS that other offerors did not have. Under the solicitation's instructions, vendors were required to be evaluated against specific management and technical factor criteria. The management factor section had a page limit of 25 pages and the technical factor section had a 20-page limit. To permit TSS to submit information satisfying a technical subfactor in its management factor section would allow TSS the unfair advantage of additional pages. Where a proposal contains an irregularity that could provide a benefit to that offeror if not extended to all offerors by the RFP, and which is prejudicial to other offerors, the proposal is unacceptable. See The Mangi Env'tl. Group, Inc., B-294597, Nov. 29, 2004, 2004 CPD ¶ 238 at 2. Accordingly, the agency properly did not consider information in the management portion of TSS's proposal to evaluate its technical approach.

Accordingly, we find the agency's unacceptable rating for TSS was reasonable and consistent with the solicitation.¹

The protest is denied.

Susan A. Poling
General Counsel

¹ To the extent TSS argues that the agency failed to consider portions of TSS's response to technical subfactor ten in conducting its evaluation of technical subfactor seven, the agency reviewed this information and determined TSS's proposal remained unacceptable for failing to adequately address all subfactor seven requirements. Contracting Officer's Statement at 10.