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

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Decision

Matter of: M7 Aerospace

File: B-405732.5

Date: February 13, 2012

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DIGEST

Protest that agency unreasonably determined that proposal for aviation support services failed to comply with solicitation requirement to maintain 85% stock effectiveness rate is denied where agency reasonably read proposal as planning to replenish stock of spare parts on a monthly basis, rather than on an “as-needed” basis, and concluded that this was inadequate to ensure the required stock levels.

DECISION

M7 Aerospace of San Antonio, Texas, protests the Department of State’s award of a contract to DynCorp International LLC, of Falls Church, Virginia, under request for proposals (RFP) No. SAQMMA11R0043, for aviation support services to assist the Colombian National Police (CNP) Aviation Program in its counter narcotics efforts. M7 asserts that the agency unreasonably evaluated its proposal.

We deny the protest.

BACKGROUND

The United States government provides administrative, technical, maintenance, training, and logistics/procurement support to the Colombian National Police Aviation Program in operating rotary and fixed-winged aircraft supporting the counter narcotics effort. The primary aviation missions include aerial escort, airmobile operations, intelligence collection, troop transport, and logistics. Under the contemplated contract, the contractor is required to provide maintenance,

logistical/procurement, training, flight standardization, and information technology support throughout Colombia at CNP bases and operating locations. RFP §§ C.1.1, C.1.4.

Award was to be made to the low priced, technically acceptable offeror, considering the following factors: (1) program management; (2) technical capabilities, logistics and procurement (with subfactors for inventory control and property book, inspection station, continuous improvement, customer service, and freight forwarding); (3) technical capabilities maintenance; (4) quality control; (5) information technology; (6) standardization and training; (7) past performance; (8) subcontracting plan (with subfactors for compliance and program management plan); and (9) price. RFP § M.9.

The RFP provided for adjectival ratings of acceptable, unacceptable or marginal for each technical subfactor and factor, except that ratings of no confidence, unknown confidence or confidence would be assigned to past performance, and a pass or fail rating would be assigned to subcontracting plan. RFP § M.10. The solicitation further provided that a rating of unacceptable on any subfactor would result in a factor rating of unacceptable, and that “a factor rating of unacceptable may exclude an offeror from award or the competitive range.” RFP § M.4. In addition, the solicitation provided that a proposal that was rated marginal was considered technically unacceptable. RFP § M.10. Finally, the solicitation indicated that the agency intended to conduct the procurement without holding discussions. RFP § M.5.

Following the submission and evaluation of proposals, M7 was rated marginal for the technical capabilities, logistics, and procurement factor based on a marginal rating for the customer service subfactor. M7 also received a rating of fail for the small business subcontracting plan, based on an unacceptable rating for program management. Although M7’s price (\$163,079,896) was lower than DynCorp’s (\$165,063,483), DynCorp’s proposal, unlike M7’s, was rated acceptable for all subfactors and factors. As a result, DynCorp was awarded the contract. This protest followed.

DISCUSSION

M7 protests the evaluation of its proposal under both the customer service and subcontractor program management subfactors. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable, and in accord with the RFP criteria and applicable procurement statutes and regulations. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Here, while we find the agency evaluation to be unreasonable in certain areas, we conclude that M7’s proposal nevertheless was reasonably found to be unacceptable.

Subcontracting

The solicitation required offerors to provide a subcontracting management plan, which, among other things:

. . . proposes a sound approach for subcontractor management structure and, the level of corporate oversight.

. . . proposes a sound approach for processes that will be used to ensure consistent satisfactory performance of subcontractors.

RFP § M.9(8)(B).

M7 proposed [REDACTED] as a subcontractor to perform the rotary wing aircraft maintenance function. The agency assigned M7's proposal a fail rating for subcontractor management because the rotary wing aircraft maintenance function is a core performance function, and, by allocating this function to a subcontractor, the government would not have privity of contract with the entity providing these services. TEPR at 26. In the agency's view, this created a concern because [REDACTED] could terminate its relationship with M7, and M7 would be unable to perform the entire rotary wing aircraft function. Id. In this regard, the agency also noted that M7 had not provided a contingency plan in the event that [REDACTED] later failed to perform its subcontract. Finally, the agency questioned M7's subcontract management approach on the basis that: (1) the organization chart was unclear as to which employees reported to [REDACTED] and which to M7; (2) there was no plan or structure for managing [REDACTED] with respect to work schedules, change order requests and quality of work; and (3) the plan failed to describe management structure, division of work, reporting lines or how M7 intends to ensure satisfactory and continued performance of the rotary wing aircraft maintenance function. Id.; Agency Response to Questions at 6-7.

As set forth below, we find that the evaluation of M7's proposal under the subcontractor management subfactor--while raising reasonable concerns--was inconsistent with the underlying solicitation, and in certain instances, inconsistent with M7's proposal. First, the solicitation did not restrict the amount of subcontracting or the tasks that a subcontractor could be proposed to perform. While an agency may be reasonably concerned about the use of subcontractors to perform a core contract function, there was no prohibition in the solicitation against M7 subcontracting the rotary wing aircraft maintenance function. In our view, absent notice to the offerors of a prohibition in this regard, it was unreasonable to reject a proposal simply on the basis that the proposal contemplated subcontracting part of the work.

In addition, there was no concern expressed in the record about this particular subcontractor. Indeed, the agency concluded that “ [REDACTED] relevant past performance gives the [government] high confidence that [REDACTED] can successfully undertake and execute the contract requirements.” TEPR at 25. Moreover, the agency’s conclusion that M7’s proposal should receive a rating of fail under the subcontracting plan evaluation subfactor because the proposal lacked a contingency plan for the possible replacement of its proposed [REDACTED] subcontractor is again inconsistent with the solicitation. In this regard, not only was there no solicitation requirement that an offeror include a contingency plan for replacing its subcontractor, but the agency has not provided any explanation why it believes that there was any significant risk that [REDACTED] would cease to perform. In these circumstances, we conclude that the agency’s concern with the lack of a contingency plan did not provide a sufficient justification to rate M7 fail for subcontractor management plan.

Finally, we find that the record does not support the agency’s other concerns with M7’s subcontract management plan. In this regard, our review of M7’s proposal indicates that M7’s proposal did address the division of work between [REDACTED] and M7, see M7 proposal at Figure 1.1-1; Teaming Agreement, and also stated that each company was responsible for managing its own employees. Teaming Agreement. Likewise, the proposal addressed M7’s oversight of [REDACTED] to ensure continued satisfactory performance of the rotary wing maintenance function. Specifically, M7 discussed in its proposal holding status meetings with [REDACTED] to discuss the status of critical purchase orders and delays that could affect mission readiness, Proposal at § 2.8.13; monitoring [REDACTED] performance with respect to cost, quality, and schedule commitments using phone calls, e-mails, and formal meetings, id. at § 3.5; and conducting quarterly reviews of [REDACTED] performance. Id. at § 3.6. The agency has not explained why M7’s detailed approach to subcontract management was inadequate or otherwise inconsistent with the solicitation requirements. In sum, we find the agency unreasonably assigned M7’s proposal a fail for subcontractor management.

In addition, we reach similar conclusions with respect to certain of the agency’s assessments under the customer service subfactor of the technical capabilities, logistics and procurement evaluation factor. While our conclusions in these areas might have led to a decision sustaining this protest, we note however, that there are other evaluation assessments that reasonably support a conclusion that this proposal failed to meet the solicitation’s material requirements for meeting an 85% stock effectiveness rate. Our conclusions are set forth below.

Customer Service

With respect to customer service, the solicitation required offerors to demonstrate the ability to provide an acceptable process to expedite orders and deliveries for all purchases, and to maintain an acceptable stock effectiveness rate. RFP § M.9(2)(D). The agency rated M7 marginal for this subfactor based on its conclusion that the proposal contained two significant weaknesses: (1) M7 planned to train personnel on **[REDACTED]**, which the agency believed would delay the procurement process; and (2) M7 planned to inventory and restock items on a monthly basis, rather than on an “as needed” basis. Technical Evaluation Panel Report (TEPR) at 12. Although we find that the agency’s evaluation of M7’s approach to **[REDACTED]** was unreasonable, we need not discuss the evaluation in this regard in light of M7’s unacceptable approach to maintaining the stock effectiveness rate.

Regarding the stock effectiveness rate, the RFP required offerors to propose a sound approach to maintain a minimum stock effectiveness rate¹ of 85% by aircraft Mission Design Series (MDS), for all consumables and time-between-overhaul requirements. RFP §§ C.2.1.5, M.9(2)(D), L.26.1.5.4. In its proposal, M7 provided that:

To ensure a stock effectiveness rate of 85%, the M7 Team Logistics and Procurement personnel will conduct a monthly analysis of on-hand parts against stock levels and replenishment all stock [sic] that falls below the established min/max levels. . .

Proposal at 43. The agency determined that M7’s plan to replenish stock on a monthly basis would result in a risk that stock would not be maintained at an acceptable level and that supplies would not be available when needed. In the agency’s view, stock replacement should occur as soon as the stock reaches the established minimum stockage level, which could occur before the end of the month. TEPR at 12. On this basis, the agency both assigned M7’s proposal a significant weakness and determined that M7’s approach to maintaining a minimum stock effectiveness rate “is considered a material failure of a proposal to meet a Government requirement.” TEPR at 12.

¹ The stock effectiveness rate measures how effective the contractor is in maintaining sufficient stock levels to ensure the readiness of aircraft for mission deployment. Specifically, it measures the number of lines (a part with a specific part number determined by the original equipment manufacturer) of inventory that are at their pre-determined minimum stockage level (as determined by usage). Technical Evaluation Panel Chairman, E-mail to GAO, Feb. 8, 2010.

M7 argues that the agency's interpretation of its proposal was unreasonable. In this regard, M7 asserts that it actually proposed a two pronged approach to maintaining stock effectiveness. The first prong, according to M7, is to perform a monthly inventory. The second prong is to replenish all stock that falls below the established min/max level. M7 claims that there is no indication in its proposal that it intended only to replenish stock on a monthly basis. In this regard, M7 notes that other parts of its proposal described the use of [REDACTED]. Proposal at 5, 58. M7 argues that it would make no sense to use [REDACTED] to keep track of inventory in real time, if it only intended to replace stock on a monthly basis.

Despite M7's arguments to the contrary, the plain language of M7's proposal provides that it will "conduct [a] monthly analysis of on-hand parts against stock levels and replenish all stock that falls below [the] established min/max levels. . . ." Proposal at 43. This language clearly conveys that M7 will inventory and replenish stock on a monthly basis. Further, while the other parts of M7's proposal where it describes [REDACTED] software that can keep track of inventory "in near real time," may indicate that M7 has the capability to track and replenish inventory on a more expedited basis, it does not commit M7 to do so. Indeed, M7 has not pointed to any provision in its proposal where it specifically commits to replenish stock on an "as-needed" basis to maintain the 85% stock effectiveness rate. Further, M7 has not shown, nor even asserted, that the agency was unreasonable in determining that replenishing stock on the basis of a monthly inventory, rather than on an "as-needed" basis, would suffice to guarantee maintaining the required 85% stock effectiveness rate. On this record, therefore, we have no basis to find that the agency evaluation in this regard was unreasonable.

Given that the agency reasonably concluded that M7's proposal materially failed to meet the solicitation requirement for an 85% stock effectiveness rate, and given that a proposal was required to meet all of the government requirements to be rated acceptable, RFP at § M.10, M7's proposal would still be rated marginal under the customer service subfactor and thus the overall technical capabilities, logistics and procurement factor. Further the solicitation defined a marginal rating as unacceptable, id., and advised offerors that an unacceptable rating on any subfactor could result in rejection of the proposal. Accordingly, we have no basis to question the agency's determination that M7's proposal was unacceptable. As a result, even though we conclude that the agency unreasonably evaluated M7's subcontractor management plan and its expedited ordering process approach, we will not conclude that the protester was prejudiced by those errors. See Knoll, Inc.; Steelcase, Inc., B-294986.3, B-294986.4, Mar. 18, 2005, 2005 CPD ¶ 63 at 4.

The protest is denied.

Lynn H. Gibson
General Counsel