Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Techseco, Inc.

File: B-284949

Date: June 19, 2000

Ron Brown for the protester.
Susan W. Boyette for Flowmeter Services & Energy Management Consultants, Inc., an intervenor.
Mary E. Clarke, Esq., Defense Logistics Agency, for the agency.
Jacqueline Maeder, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected as technically unacceptable a proposal that was noncompliant with material solicitation requirements that proposed service engineers possess current training certifications issued by specified equipment manufacturers.

DECISION

Techseco, Inc. protests the rejection of its proposal as technically unacceptable and the award of a contract to Flowmeter Services & Energy Management Consultants, Inc. under request for proposals (RFP) No. SP3100-00-R-0005, issued as a small business set-aside by the Defense Logistics Agency (DLA) for preventive maintenance and repair services on certain metering and data collection systems located at the Defense Distribution Depot Norfolk (DDNV) complex at the Norfolk Naval Station.

We deny the protest.

The RFP contemplated the award of a fixed-price contract to the low-priced, technically acceptable offeror for a base year with four 1-year options. RFP at 4, 11. Regarding the equipment to be maintained, the statement of work noted that the meters and meter processors at DDNV had been manufactured by Engineering Measurements Company (EMCO), and that the facility had Enersave II and/or Energy Manager NT data collection systems manufactured by Lifespring Resources.

RFP attach. 1, at 1. The solicitation advised offerors that proposals would be evaluated for technical acceptability only and set forth three evaluation factors to determine acceptability, as follows:

> (1) Service Engineers . . . shall demonstrate practical working knowledge maintaining and repairing steam meter equipment.
>
> (2) Service Engineers . . . shall possess a current certification issued by Engineering Measurements Company (EMCO) to install, maintain and repair its flow meters and processors.
>
> (3) Service Engineers . . . shall possess a current certification issued by Lifespring Resources to operate and maintain the Enersave II and/or the Energy Manager NT data collection system.

RFP at 11.

The RFP specified that the three technical factors listed above established the minimum criteria required by the agency to determine a proposal acceptable, and cautioned offerors that "[i]n order for a proposal to be determined technically acceptable, it must be technically acceptable under each of [these] . . . technical factors." Id. In addition, the RFP at page 10 incorporated by reference a modified version of the standard provision "Instructions to Offerors - - Commercial Items," FAR § 52.212-1, informing offerors that the government intends to evaluate offers and award a contract without discussions, therefore initial offers should contain the offeror's best terms from a price and technical standpoint.

Techseco and Flowmeter were the only firms that submitted proposals by the February 18 closing time. Techseco submitted the low-priced offer, but its proposal was found to be technically unacceptable because its proposed service engineers did not possess the required certifications. Specifically, Techseco proposed two named service engineers and provided information demonstrating that they had the required practical working knowledge maintaining and repairing steam metering equipment, but provided a certificate issued by EMCO for only one of the proposed service engineers, and even that certification had an expiration date of February 28, 1986. Agency Report, Tab 9, Techseco Proposal, at 6-7. Techseco provided no certification from Lifespring for either proposed engineer. Instead, in its proposal cover letter, Techseco referenced an enclosed February 16 letter addressed to Lifespring, which indicated that Techseco's proposed service engineers did not currently possess Lifespring certification but were seeking to obtain training and certification at an unspecified later date. Techseco requested that Lifespring "consider us registered for your next training session." Id. at 5.

Because the agency had determined not to conduct discussions and Techseco had not submitted all the information required to be determined technically acceptable and specifically had submitted evidence of noncompliance with the Lifespring

certification requirement, Techseco's proposal was eliminated from consideration for award as technically unacceptable. Agency Report, Tab 10, Prenegotiation Memorandum, at 3.

By letter dated March 10, DLA notified Techseco that award had been made to Flowmeter. Agency Report, Tab 21, Notice of Award, at 1. After a debriefing, Techseco filed a protest with the agency. By letter dated March 16, Techseco also submitted a training certificate from EMCO for one of its proposed service engineers with a March 31, 2005 expiration date. Agency Report, Tab 13, Techseco's Current EMCO Certification, at 2. By letter dated March 17, Techseco filed this protest with our Office.

Techseco argues that its proposal should not have been rejected, complaining that the agency improperly ignored the current EMCO training certificate submitted to DLA after award and its offer "to acquire a certificate of training from Lifespring Resources on their particular product." Protest at 1-2. The protester states that the letter to Lifespring which it submitted with its proposal "was our formal registration notice to Lifespring Resources." Id. at 2. The protester also contends that the agency "asks too much of a contractor . . . to pay the price for Lifespring Resources training prior to award." Protester's Comments at 3. Finally, the protester argues that the agency should have conducted discussions with the protester regarding the shortcomings in its proposal. Techseco points out that there was limited competition, Techseco submitted the low price, and one of its proposed engineers is highly experienced, Protester's Comments at 3-4, and argues that if the agency had held discussions, Techseco would have had a "reasonable chance of being selected for award." Id. at 3.

In a negotiated procurement, a proposal that fails to conform to material solicitation requirements is technically unacceptable and cannot form the basis for award. Green Shop, Inc., B-278125, Dec. 1, 1997, 97-2 CPD ¶ 154 at 2. Here, DLA reasonably determined that Techseco's proposal failed to satisfy two of the three mandatory RFP requirements. As noted above, the RFP required that proposed service engineers possess current certifications from EMCO and Lifespring Resources, establishing the engineers' ability to perform maintenance on each company's products. Techseco's proposal included an expired training certification from EMCO for one of its two proposed service engineers, no EMCO certification at all for the other, and a letter indicating its intent to register for Lifespring training, which established that the two engineers lacked Lifespring certification. Thus, Techseco failed to satisfy either requirement.

Techseco's contentions that the agency should have accepted the protester's offer to acquire training from Lifespring and the current EMCO certification that the protester submitted after award are without merit. The RFP required offerors to possess specified current certifications from the two companies, not to offer to obtain such certifications in the future. Because the RFP placed Techseco on notice of the agency's intention to award without discussions, Techseco could not

reasonably presume that it would have a later opportunity to improve its proposal by submitting subsequently acquired certifications. There is generally no obligation that a contracting agency conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. McShade Enters., B-278851, Mar. 23, 1998, 98-1 CPD ¶ 90 at 4. The contracting officer has broad discretion in deciding whether to hold discussions, which our Office will review only to ensure that it was reasonably based on the particular circumstances of the procurement. Id.

Here, the record provides no indication that the contracting officer abused his discretion in deciding not to conduct discussions with Techseco. As noted above, the agency reasonably evaluated Techseco's proposal as technically unacceptable. Techseco's position that it would have had a reasonable chance of being selected for award if the agency had conducted discussions is not supported by the record. Even if Techseco had been given the opportunity to revise its proposal after discussions regarding the status of the EMCO certification for one of its proposed service engineers, Techseco does not assert that its other proposed service engineer has the required EMCO certification, and the record is clear (and this was evident from Techseco's proposal) that its proposed service engineers do not hold the required current certifications from Lifespring. Discussions would not have enabled Techseco to correct these deficiencies to make its proposal technically acceptable.[1]

The protest is denied.

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[1] That Techseco would not have corrected these deficiencies had it been afforded discussions is confirmed by its argument that the agency asks too much of a contractor by imposing the RFP requirement that contractors propose engineers with Lifespring training before being awarded the contract. That is, Techseco is really objecting to the RFP certification requirement. However, this issue is untimely under our Bid Protest Regulations since protests based on alleged defects which are apparent on the face of a solicitation must be filed prior to the initial closing time. 4 C.F.R. § 21.2(a)(1) (2000).