



Comptroller General
of the United States

940162

Washington, D.C. 20548

Decision

Matter of: Xeta International Corporation

File: B-255182

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decision.

DIGEST

1. Agency evaluation of technical proposal as deficient was reasonable where: (1) sample task response was limited to generalized discussion of unproven and undeveloped technology; (2) protester provided three vague resumes and failed to provide required letters of commitment for proposed key personnel; and (3) proposal failed to discuss elements of protester's management approach as required by the solicitation.

2. Agency properly made contract award on the basis of initial proposals without conducting discussions where: (1) solicitation clearly advised offerors that the agency intended to make contract award without discussions; (2) agency reasonably determined that protester's proposal deficiencies would require major revisions for the proposal to become acceptable; and (3) agency reasonably determined that another offeror's initial proposal was a technically superior and reasonably priced offer.

DECISION

Xeta International Corporation protests the award of a contract to Frontier Engineering, Inc. under request for proposals (RFP) No. N00600-93-D-0877, issued by the Department of the Navy for engineering and technical support services for the Naval Air Systems Command Tactical Training Ranges Program Office, located in Washington, D.C. Xeta contends that the Navy improperly rejected its proposal.

We deny the protest.

BACKGROUND

On April 23, 1993, the agency issued this RFP for an indefinite quantity time-and-materials type contract based on fixed-price labor rates for a 1-year base period with four 1-year options. The RFP sought numerous technical and engineering support services necessary to develop, test, and monitor various aspects of the fleet's critical defense systems. These services included preparing technical data; revising program documents; developing management information reports; and providing foreign military sales planning data.

The statement of work organized these services into 13 specific tasks--each with its own performance work statement and detailed requirements. To aid in evaluating proposals, the RFP required offerors to prepare responses to three sample tasks which were representative of the actual tasks to be performed by the successful contractor. In responding to the sample tasks, offerors were requested to discuss and provide:

"(1) a description of possible areas to be investigated in researching each task, (2) a detailed description of the technical approach including a detailed step-by-step procedure and methodology which will be used in accomplishing each task, and (3) identification of the additional information that would be required to perform the task, (4) a detailed work plan for implementation, (5) a product outline describing what would be the expected deliverable(s) and/or result(s) of this task, and (6) manhours by labor category but not cost."

Significantly, offerors were directed not to propose studies in response to the sample tasks.

The RFP required offerors to submit both a technical and price proposal and listed the following technical evaluation factors in descending order of importance: technical approach, key personnel, management plan, and corporate experience. The RFP also advised offerors that overall proposal risk would be evaluated. Finally, the solicitation provided for the evaluation of each offeror's past performance, and the ability of an offeror to resolve problems, which the Navy labeled systemic improvement.

Offerors were advised that technical proposals would receive adjectival ratings of outstanding, better, acceptable, marginal or unacceptable. Of relevance here, the marginal rating was defined as:

"Less than acceptable. There are some deficiencies in the proposal. However, given the opportunity for discussions, the proposal has a reasonable chance of becoming at least acceptable."

Offerors were also advised that an unacceptable rating under one technical factor could result in the entire technical proposal being found unacceptable.

The RFP stated that award would be made to the responsible offeror whose proposal was considered most advantageous to the government, price and other factors considered. In addition, the RFP provided that the agency intended to evaluate proposals and make award without conducting discussions unless the contracting officer determined that discussions were necessary. In view of the Navy's stated intent to award the contract without discussions, the RFP warned that initial proposals should contain the offeror's best price and technical terms, and advised that the government might select other than the lowest-priced offer. In this regard, the RFP indicated that the Navy would consider paying a price premium of up to approximately 35 percent for a technically superior offer.

With their technical proposals, offerors were required to submit letters of commitment and detailed resumes for all proposed key personnel, including current employees and contingency hires; in addition, the RFP specified a format for resumes. Finally, offerors were required to submit a summary of recent relevant contracts demonstrating past performance, and to include a systemic improvements management discussion addressing how past performance problems were detected and resolved.

For their price proposals, offerors were to include prices for 75 contract line item numbers corresponding to various engineering and technical services. Offerors were also required to submit cost and pricing data.

On May 21--after conducting a May 13 preproposal conference which the protester attended--the agency issued amendment No. 0001, which modified several key personnel experience requirements and set forth 34 contractor questions and answers from the May 13 conference. Of relevance to this protest, two of the questions and answers set forth in the

amendment addressed the requirement for letters of commitment. They stated:

"23. Reference: Page 86, Paragraph L54
Question: Paragraph L54 calls for letters of commitment for all key personnel. Does this letter of commitment count as one of the three pages for resume . . . ?

"Answer: No.

"24. Reference: Page 86/87
Question: Is it correct to assume that (letters of commitment) are excluded from any page count limitations? Should they be included in the Technical Volume or the Cost Volume?

"Answer: A separate letter of commitment is required. Such letters are excluded from the page limitations in the technical proposal."

By the June 21 closing date for receipt of proposals, three offers--including those from Xeta and Frontier--were received and forwarded to the Technical Evaluation Panel (TEP) for review. As discussed below, the record shows that as a result of various deficiencies in Xeta's technical proposal, the TEP awarded Xeta's technical proposal an overall rating of marginal. After reviewing the evaluation findings, the contracting officer determined that Xeta's proposal contained numerous deficiencies requiring major revision, and that Frontier had submitted a technically superior proposal. On September 23, after the Navy verified with the Defense Contract Audit Agency that each of Frontier's price and cost figures represented fair and reasonable prices and labor rates, the Navy awarded the contract without discussions to Frontier.

On October 1, Xeta filed a protest with this Office challenging the award as improper.

DISCUSSION

In its protest, Xeta contends that the agency improperly rejected its proposal. First, Xeta argues that its responses to Sample Task I and the key personnel evaluation factor were improperly evaluated as marginal. According to Xeta, the Navy improperly evaluated three of its proposed resumes and unreasonably downgraded its proposal for failing to submit letters of commitment for its key personnel. Additionally, Xeta challenges the Navy's evaluation of the systemic improvements portion of its technical proposal, and argues that the Navy could not reject its proposal as

technically unacceptable without giving it the opportunity to correct its deficiencies through discussions.

The evaluation of proposals is within the discretion of the procuring agency since it is responsible for defining its needs and the best method of accommodating them, and must bear the burden resulting from a defective evaluation. Orion Research, Inc., B-253786, Oct. 21, 1993, 93-2 CPD ¶ 242. In cases challenging an agency's technical evaluation, our Office will not independently reevaluate the proposals anew, but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP criteria. See Building Servs. Unlimited, Inc., B-252791.2, Aug. 25, 1993, 93-2 CPD ¶ 133. In this regard, a protester's disagreement with the agency's technical judgment, without more, does not show the agency's judgment was unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

From our review of the record, including Xeta's and the awardee's proposal, the agency's evaluation documentation, and the parties' arguments, we find no basis to question the assessed deficiencies in Xeta's proposal. Nor do we find improper the agency's decision to award this contract without conducting discussions.

Sample Task One

The RFP here required offerors to respond to each of the three sample tasks with information regarding how they would address the requirements of those sample tasks. Sample Task I, entitled "Underwater Tracking Ranges for Anti-Submarine Warfare Training," required each offeror to "describe how [it] would assess the fleet's requirements and the shallow water training capabilities of the existing ranges and/or new potential training areas technologies." The solicitation specifically advised offerors to discuss how to support such a facility, how to integrate the facility with existing tracking range facilities and related weapons operations, as well as any other factor considered important.

Xeta proposed developing a shallow water acoustic model to carry out Sample Task I. The Navy concluded that due to the lack of technical detail and the weak description of how Xeta would investigate the sample task issues, Xeta's sample task response failed to demonstrate sufficient understanding and ability to successfully perform the Navy's requirements. Consequently, the TEP gave Xeta a "marginal" rating under the technical approach evaluation factor.

While Xeta's description of how the proposed acoustic model would function was very detailed--in fact, the agency termed the model unnecessarily complicated--our review shows that the Navy correctly concluded that Xeta's proposal failed to respond to several of the required discussion areas for the sample task. First, Xeta failed to provide a sufficient description of the necessary technical areas requiring investigation to develop an acoustic model. Although Xeta referenced investigating several on-going Navy projects, it did not provide any parameters for this investigation, and did not explain how these projects could provide relevant assistance towards Xeta's acoustic model development goals. Nor did Xeta address any known weaknesses of an acoustic model approach--such as disruptive ambient noise, day/night fluctuations or the acoustic surface-bottom reflections indigenous to a shallow water environment. Instead, Xeta's response merely set forth several cursory assertions--for example, that the firm would investigate unspecified relevant technical writings and technology developments.

The TEP also determined that several of the technical assumptions upon which Xeta's proposed acoustic model was based were inaccurate. For example, Xeta referenced utilizing a T-1 satellite link to a Navy testing system which the TEP was unable to verify.¹ In addition, the Navy stated that Xeta failed to describe the results of its proposed acoustic model's successful performance. Similarly, the TEP determined that Xeta's work plan--which was limited to a generalized bar graph--asserted that the proposed acoustic model would be in use 4 months before it was fully developed. Finally, while the sample task instructions specifically asked offerors to discuss how they would integrate proposed solutions with existing Navy operations and weapons range tracking systems, Xeta's response provided no such discussion. Rather, as noted

¹During the protest, Xeta provided detailed information to support its claim that a satellite link does exist as depicted in its proposal. In our view, however, the record shows nothing unreasonable about the Navy's conclusion to the contrary. First, the agency has provided an affidavit from the TEP chairman stating that after Xeta raised this issue at the agency's October 1 debriefing, the TEP chairman contacted a designated Xeta reference who informed the chairman that notwithstanding Xeta's representations, the T-1 satellite link between these sites does not exist. In rebuttal comments, Xeta provided a copy of a draft memorandum "Link Agreement" which purports to substantiate the referenced T-1 satellite link. However, when our Office contacted several of the points of contact listed in Xeta's own materials, they, too, reported that this link is not in existence.

above, Xeta's response to this sample task was strictly limited to proposing an acoustic model technical approach which is still undergoing development, and which has not been proven in the shallow water application required by this task.

We find nothing unreasonable in the TEP's conclusion that Xeta's generalized discussion of an unproven acoustic model constituted a marginal technical approach. In short, despite the sample task instructions for specific discussion of six areas, Xeta nonetheless proposed an approach based on a limited, unproven, and unverifiable technology.

Personnel Qualifications

Xeta also challenges the Navy's assessment of its proposed personnel. Under the solicitation, offerors were to propose, and submit resumes for, 22 key personnel. In this regard, the solicitation advised offerors to clearly explain how an individual's prior experience relates to the experience requirement of the position for which the individual is proposed.

In conducting its evaluation, the Navy found that three of Xeta's key personnel did not demonstrate an adequate background in the required area of technical experience. First, one of the resumes for a senior engineer failed to establish the required 12 years of systems engineering experience. Next, one of the resumes for a proposed basic design concept engineer failed to establish the minimum 1 year experience in basic engineering design concepts. Finally, one of the resumes for a computer systems analyst specialist failed to establish the minimum 1 year of supervisory experience. Additionally, the Navy found that Xeta failed to provide letters of commitment for its key personnel. As a result, the Navy rated Xeta's proposal marginal under the key personnel evaluation factor.

Although Xeta argues that its key personnel resumes for these three positions fully met the solicitation's experience requirements, our review indicates otherwise. With respect to Xeta's senior engineer, the Navy determined that 3 of the individual's claimed 12 years of systems engineering experience were not relevant. The resume indicated that from 1989 until 1992, this individual was self-employed as a business consultant performing engineering tasks limited to logistics, acquisition, and technical support. In our view, the Navy reasonably concluded that supporting isolated parts of an overall system or project does not constitute systems engineering, since this experience does not involve coordinating and examining an entire technical system from a global perspective.

With respect to Xeta's proposed basic engineer candidate, our review shows that the resume for this individual fails to establish aeronautical experience in tasks involving basic engineering design concepts. At best, this individual's resume only indicates that he participated in a design advisory group. There is no explanatory detail about whether the group's responsibilities included addressing basic engineering design concepts for an aeronautical system.

Finally, the resume for the computer systems analyst/specialist did not clearly demonstrate experience in a supervisory position for 1 year. Although the submitted resume makes limited claims that the individual held positions of responsibility--like that of an assistant team leader--we find nothing unreasonable in the Navy's conclusion that the resume did not clearly demonstrate supervisory experience--especially when the resume is compared to the other Xeta resume for this position which clearly shows this experience. It was Xeta's responsibility to prepare an adequately written proposal which could be evaluated in accordance with criteria set forth in the solicitation; by not submitting adequately written resumes, Xeta ran the risk of being rejected. See Engineering Mgmt. Resources, Inc., B-248866, Sept. 29, 1992, 92-2 CPD ¶ 217.

Xeta also contends that it was unreasonable for the Navy to downgrade its proposal for failing to provide letters of commitment, since this requirement was not listed as an evaluation subfactor under the key personnel factor set forth in Section M. Instead, Xeta contends that the requirement was set forth in Section L, entitled "Instructions, Conditions and Notices to Offerors." According to Xeta, since all of its proposed key personnel are current employees, letters of commitment from these individuals were not necessary.

Paragraph L54 of the RFP expressly required letters of commitment from current employees and required those letters to state the employee's commitment to serve as proposed should the offeror receive contract award. This clause similarly required letters of commitment for contingency hires. Despite Xeta's contention to the contrary, there is no requirement that every key term of a contract be set forth in the evaluation section. In our view, evaluation of the offeror's ability to provide expert personnel--shown by providing letters of commitment--is inherent in the key personnel evaluation factor set forth in Section M. See Advanced Sys. Tech., Inc.; Eng'g and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153.

Xeta's second contention--that it did not need to provide letters of commitment from its own employees--is not supported by the RFP. As indicated by paragraph L54 on its face, no exemption from this requirement for current employees was intended by the agency. An offeror's proposed use of a certain individual--without more--does not constitute a firm commitment for evaluation purposes. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. Indeed, without such precautions, there would be no way to preclude an offeror from proposing an impressive array of employees and/or subcontractors, getting evaluated on that basis, and receiving award, even where the persons or companies proposed had never committed themselves to the offeror, and had no intention of doing so. See ManTech Field Eng'g Corp., B-245886.4, Mar. 27, 1992, 92-1 CPD ¶ 309, aff'd, B-245886.5, Aug. 7, 1992, 92-2 CPD ¶ 89; Management Servs. Inc., B-184606, Feb. 5, 1976, 76-1 CPD ¶ 74.

Systemic Improvement

Xeta argues that the Navy unreasonably found that its proposal was deficient in the area the Navy called systemic improvement. The RFP defined systemic improvement as management practices to resolve performance difficulties, including evidence that the offeror can take corrective action to address performance problems.

Our review shows that Xeta's proposal did not present the systemic improvements analysis required by the RFP. While Xeta's proposal included general overview assertions, such as a claim that its "management procedures have undergone systemic improvement," as well as references to accomplishing systemic improvement management through various automated data processing programs, Xeta's proposal failed to identify details of its systemic management technique and did not respond with the root cause/corrective action analysis requested by the solicitation instructions for this item. As a result, we conclude that the TEP reasonably considered Xeta's proposal deficient in this area.

Agency's Award Decision

Xeta argues that notwithstanding the above-referenced deficiencies in its proposal, its offer should not have been rejected as technically unacceptable without discussions. Xeta contends that since its offer was rated marginal, rather than technically unacceptable, award on initial proposals without discussions was unreasonable. Xeta contends that if discussions had been held, most of its proposal deficiencies could have been remedied and its proposal made technically acceptable.

Where, as here, an RFP advises offerors of the agency's intent to award without conducting discussions, the agency may properly do so, even to an offeror which did not propose the lowest price (like Frontier), provided that the contracting officer determines that discussions are unnecessary. See Federal Acquisition Regulation § 15.610(a)(4); Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200. While the contracting officer has discretion to decide whether or not to hold discussions, we will review the exercise of that discretion to ensure that it is reasonably based on the particular circumstances of the procurement. See TRI-COR Indus., Inc., B-252366.3, Aug. 25, 1993, 93-2 CPD ¶ 137.

Our review shows that the Navy reasonably concluded that Frontier's proposal was superior to Xeta's, and the record indicates this technical superiority was the predominant factor in the TEP's selection decision. In addition, we agree with the TEP's conclusion that Frontier's initial offer contained no deficiencies and, in fact, exceeded many of the RFP's minimum requirements. Xeta, on the other hand, failed to discuss aspects of its technical proposal about which the solicitation instructions clearly sought information.

Given the RFP's stated intent to make contract award on the basis of initial proposals; Xeta's failure to adhere to the solicitation's instructions; the fact that the protester's proposal would have required major revisions to become technically acceptable;² and the submission of a technically superior, reasonably priced offer by Frontier, we find reasonable the agency's determination to make contract award without conducting discussions. See Macro Serv. Sys., Inc., supra.

The protest is denied.

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 for Robert P. Murphy
 Acting General Counsel

²Xeta argues that its proposal deficiencies could have been addressed through a simple clarification rather than discussions. We disagree. As discussed above, Xeta's proposal required major modifications, which would have required extensive discussions.