



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: STS Strategic Technologies & Sciences, Inc.

File: B-257980; B-257980.2

Date: November 17, 1994

J. E. Wainwright for the protester,
Elward L. Saul, Esq., Department of the Navy, for the
agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency properly excluded protester's proposal from the competitive range under a request for proposals for technical support services where evaluators reasonably concluded that the proposal was technically unacceptable primarily because of the lack of experience of key personnel--the most important evaluation criterion--and could not be made technically acceptable without major revisions.

DECISION

STS Strategic Technologies & Sciences, Inc. (STS) protests the exclusion of its proposal from the competitive range and the subsequent award of a contract to Joint Oceanographic Institutions, Inc. (JOI) under request for proposals (RFP) No. N00014-94-R-0004. The RFP was issued by the Office of Naval Research (ONR), Department of the Navy, for technical services in support of various environmental research programs. The protester contends that the agency improperly evaluated its proposal.

We deny the protests.

BACKGROUND

The RFP, issued February 10, 1994, contemplated the award of a cost-plus-fixed-fee, level-of-effort contract to provide technical assistance for a 2-year base period, with up to three 1-year option periods. The programs to be supported are the United States Global Change Research Program (USGCRP), the Strategic Environmental Research and Development Program (SERDP), and the Navy's Environmental

Quality (EQ) Program. Section C of the RFP stated that the successful contractor was to provide a liaison officer (LO) who would establish "direct interface with academia, the National Academy of Sciences, the Committee on Earth and Environmental Sciences's Subcommittee on Global Change Research, the SERDP Executive Director," and other federal agencies, and various advisory and working groups listed in the RFP. The responsibilities of the LO include attending meetings, reviewing program documentation and correspondence for Department of Defense (DOD) impact issues, and preparing policy and implementation guidance for ONR's USGCRP representative. The annual estimated total level of effort for the contract is 2,080 hours for the LO, the only labor category listed in the RFP. The RFP informed offerors that JOI has been providing the required services under a contract with the Navy.

Section M of the RFP listed technical and cost as the two criteria the agency would consider in evaluating proposals. Under the technical criterion, the RFP listed, in descending order of importance, personnel qualifications, and management and corporate qualifications, as subcriteria. Cost was to be evaluated for realism. Award was to be made to the offeror whose proposal was found to be most advantageous to the government.

Two firms, JOI and STS, responded to the RFP by the time set on March 14 for receipt of initial proposals. A technical evaluation team (TET) evaluated technical proposals under the criteria announced in the RFP. Based on the initial evaluation, the TET awarded STS' technical proposal a total of 56 points (out of a maximum of 80 points). As discussed more fully below, the TET concluded that STS' proposal had serious weaknesses, particularly with respect to the experience; background; and qualifications of its proposed LO, which rendered the firm's proposal technically unacceptable. By contrast, the TET found that JOI offered an exceptionally well-qualified LO with extensive, relevant experience in all areas to be supported. As a result, the TET awarded JOI's technical proposal a nearly perfect score of 78 points and recommended that the agency conduct discussions only with JOI.

By letter dated May 24, the contracting officer notified STS that its proposal was rejected as unacceptable primarily because its proposed LO lacked relevant experience in ocean-related global change programs; the LO had no background serving as liaison at the federal agency level; and the LO lacked experience recommending policy or guidance at the federal agency level. ONR debriefed STS on June 1. This protest to our Office followed an agency-level protest which the Navy denied.

PROTESTER'S CONTENTIONS

STS contends that in evaluating its proposal, the TET improperly deviated from the evaluation criteria announced in the RFP. In this connection, the protester argues that the type of experience its proposed LO allegedly lacked, was not specifically required by the RFP. The protester also argues that the TET and ONR contracting officials were biased in favor of retaining the incumbent's LO and that award to JOI at a higher cost than STS proposed was improper.¹

DISCUSSION

Evaluation of STS' proposal

The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Id. Here, we find that the record supports the evaluation of STS' proposal.

Section L of the RFP stressed that ONR considered the LO to be essential to the successful performance of the contract, and that the background and experience of the individual proposed to fill that position would play a central role in the evaluation of proposals. Accordingly, under the personnel qualifications evaluation criterion, "[t]he experience of the proposed [LO] relevant to the proposed task" was the most important subcriterion, worth 45 points out of the total of 80 points available for technical proposals. Section M of the RFP stated that the proposed LO's experience and educational background should mirror the tasks specified in the statement of work (SOW) and the qualifications for the LO described in section L.24 of the RFP.

¹STS argues for the first time in its comments on the agency report that the RFP should have been set aside for exclusive participation by small disadvantaged business concerns. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1994). Since STS raised this issue for the first time in its comments on the agency report, well after the March 14 closing date for receipt of initial proposals, this allegation is untimely and not for consideration.

As already discussed, the SOW required the contractor to provide assistance and support for Navy and DOD interests in the USGCRP, the SERDP, and the Navy's EQ program. The agency explains that since the primary medium for Navy operations is the ocean, the Navy faces a host of ocean-related environmental issues involving its surface ships and submarines. Accordingly, section L.24 of the RFP stressed that the proposed LO should have a strong working knowledge and understanding of the functions and responsibilities associated with the Navy's ocean-related environmental programs.

The TET unanimously found that although STS' proposed LO had extensive experience in space programs, that individual had no experience with ocean-related global change issues; ocean pollution; or other ocean-related environmental issues. The TET further concluded that although the proposed LO appeared to have some basic knowledge of the programs covered by the RFP, STS did not demonstrate in its proposal that its proposed LO had a working knowledge of SERDP, or of Navy or DOD programs.

The RFP also required the proposed LO to submit for evaluation a technical approach statement. The TET found that rather than displaying a full understanding of the uniqueness of the various research programs covered by the RFP and the complexities of the issues addressed by each program, the statement STS' proposed LO submitted simply repeated the language contained in the SOW. It did not mention the appropriate government offices with which the contractor was expected to work, and those offices mentioned were either incorrectly identified, not known to be part of any of the programs covered by the RFP, or attributed with responsibilities and functions of other offices and commands. The TET thus concluded that STS was not knowledgeable about the internal structure of the Navy or DOD program offices with which the contractor would be involved.

Given the LO's central role in performing the contract, and in view of STS' proposed LO's background, the TET reasonably concluded that STS' proposed LO had neither the type of experience contemplated by the RFP, nor sufficient knowledge of the structures of the organizations involved to successfully carry out the functions of an LO under the contract. Accordingly, the TET reasonably downgraded STS' proposal under the personnel qualifications subfactor--the most important evaluation area--awarding the firm a total of 29.25 points (out of 45) in that area. Based on this low rating under the most important evaluation factor, the TET reasonably found STS' proposal unacceptable overall.

The protester does not rebut the TET's conclusion that its proposed LO lacked ocean-related environment experience. Rather, STS argues that the agency penalized its proposal by applying specific ocean-related experience requirements not listed in the RFP. Where, as here, a solicitation lists general experience as an evaluation factor, an agency may consider experience in the specific services sought since such specific experience reasonably relates to the general experience factor. See Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326; Hydro Research Science, Inc., B-230208, May 31, 1988, 88-1 CPD ¶ 517. In light of the responsibilities of the LO under the contemplated contract, particularly in support of the Navy's EQ program, the agency could reasonably find the LO's lack of ocean-related environment experience a significant weakness and downgrade STS' proposal in the personnel qualifications area.

While the determination of whether a proposal is in the competitive range is principally within the reasonable exercise of the procuring agency's discretion, we closely scrutinize any evaluation, such as here, that results in a competitive range of one; such a competitive range, however, is not per se illegal or improper. See Defense Sys. Concepts, B-242755.2, July 1, 1991, 91-2 CPD ¶ 2. Here, based on our detailed review and for the reasons set forth above, we conclude that the record reasonably supports the agency's determination that STS' proposal could not be made acceptable without major revisions, including having to propose a different LO and completely rewriting the technical approach statement so as to reflect a better understanding of the programs and the appropriate DOD and Navy offices involved. Accordingly, the decision to exclude STS' proposal from the competitive range was proper. See Intraspace Corp., 69 Comp. Gen. 351 (1990), 90-1 CPD ¶ 327.

STS' contention that its proposal should have been included within the competitive range because STS proposed a lower overall cost than JOI is without merit. A technically unacceptable proposal cannot be considered for award, notwithstanding its low cost. Color Ad Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154. Since the agency reasonably found STS' proposal technically unacceptable, ONR could not properly consider STS' proposal for award. See Amstar Communications, B-255179; B-255179.2, Feb. 7, 1994, 94-1 CPD ¶ 77.²

²On September 20, STS filed a document in our Office which STS entitled "Supplemental protest based on new grounds for protest." Notwithstanding its title, our review of that document reveals no new grounds of protest. STS merely

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Other Issues

STS also maintains that the TET's evaluation of proposals and the award of the contract to JOI were the result of bias on the part of ONR contracting officials. Where a protester alleges bias on the part of procurement officials, the protester must show that the officials intended to harm the protester. Advanced Sys. Technology, Inc.; Eng'g and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. In the absence of such proof, contracting officials are presumed to act in good faith. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Except for its blanket assertions, the protester has provided no evidence of bias on the part of the TET or any ONR contracting official. Our review of the individual evaluators' score sheets shows that all evaluators unanimously considered the weaknesses concerning STS' proposed LO and the firm's apparent lack of understanding of the programs and issues involved to warrant rejection of STS' proposal as unacceptable. STS has not rebutted any of the TET's findings in this regard. The fact that JOI proposed a well-qualified, experienced LO, and that the firm was thoroughly familiar with the research programs covered by the RFP, does not show that the TET or contracting officials were biased.

STS also argues that JOI received an unfair competitive advantage in the evaluation as a result of its incumbency. It is not unusual for a contractor to enjoy an advantage in competing for a government contract by reason of incumbency, and such an advantage, so long as it is not the result of preferential treatment or other unfair action by the government, need not be discounted or equalized. Liberty Assocs., Inc., B-232650, Jan. 11, 1989, 89-1 CPD ¶ 29. The agency is not required to structure a solicitation so as to neutralize natural advantages gained by incumbency, such as having qualified personnel and possessing a clear

²(...continued)

repeats arguments it raised in its original protest, and raises issues which we will not review because they are either untimely (e.g., that ONR has awarded contracts to JOI in the past), or immaterial with respect to the propriety of the agency's decision to eliminate as technically unacceptable STS' proposal from further consideration (e.g., that ONR did not take into account a "fair market price" in calculating the independent government estimate).

understanding of the areas the agency intends to evaluate.
See LaQue Center for Corrosion Technology, Inc., B-245296,
Dec. 23, 1991, 91-2 CPD ' 577. STS' assertion that JOI
enjoyed an unfair competitive advantage is not supported by
the record.

The protest is denied.

for 
Robert P. Murphy
Acting General Counsel