



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: A & W Maintenance Services, Inc.

File: B-258293; B-258293.2

Date: January 6, 1995

Michael A. Worku for the protester.
David C. Tolman for DCT Incorporated, an interested party.
J.H. Huddleston, United States Customs Service, Department of the Treasury, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where an agency rejects a proposal from a small business as technically unacceptable on the basis of factors not related to responsibility, as well as responsibility-related ones, the agency is not required to refer the matter to the Small Business Administration under its certificate of competency procedures.

DECISION

A & W Maintenance Services, Inc. protests the award of a contract to DCT Incorporated under request for proposals (RFP) No. CS-94-035, issued by the United States Customs Service, Department of the Treasury, for building maintenance, grounds maintenance, and custodial services for the Customs Service National Aviation Center in Oklahoma City, Oklahoma. The protester basically maintains that the agency improperly rejected its proposal as technically unacceptable.

We deny the protest.

The RFP, issued as a total small business set-aside on December 13, 1993, contemplated the award of a firm, fixed-price contract with cost reimbursable contract line items for a base period and four 1-year option periods. The RFP provided that proposals would be evaluated on the basis of the following technical evaluation factors, listed in descending order of importance: technical approach (including building maintenance considerations, which were

slightly more important than the equally weighted grounds maintenance and custodial services considerations); management plan (an offeror's approach to direct and control the work functions required by the statement of work (SOW)); and personnel and corporate experience (the qualifications and experience of an offeror's proposed staff, and an offeror's corporate knowledge, experience, and demonstrated ability to perform substantially the same or similar tasks identified by the SOW). The RFP advised that proposals should be specific and complete in every detail, and that a proposal should not merely offer to perform work in accordance with the SOW, but should outline the actual work proposed as specifically as possible. The RFP further advised that the SOW reflects the problems and objectives of the project; therefore, repeating the SOW without sufficient elaboration would not be acceptable.

The RFP also provided that a price/cost evaluation would be performed to determine if an offeror's proposed price was reasonable, realistic, and accurately and adequately portrayed the work to be performed. The RFP advised that the award would be made to the low-priced, technically acceptable offeror.

Two firms--the protester, which was the incumbent contractor for grounds maintenance and custodial services at the facility,¹ and DCT--submitted initial proposals. Following receipt of proposal clarifications, the protester's proposal, rated susceptible of being made acceptable, and DCT's proposal, rated acceptable, were included in the competitive range.² Following written discussions with the protester, and oral and written discussions with DCT, both firms submitted best and final offers (BAFO).

The protester's BAFO, which was priced approximately 2 percent higher than DCT's BAFO, was rated technically unacceptable. The agency determined, among other things, that the protester, while having acceptable grounds maintenance and custodial services experience, offered a "trial and error" approach, generally making cursory

¹Building maintenance requirements were not included in the protester's predecessor contract.

²The technical evaluation panel evaluated proposals by assigning numerical points and adjectival ratings which were supported by narratives describing the strengths and weaknesses in the respective proposals.

reaffirmations of the SOW for performance of the building maintenance requirements, and failed to demonstrate, in accordance with the SOW, at least 5 years of corporate building maintenance experience. The agency did not credit the protester, for purposes of corporate experience, with the experience of its proposed project manager, who was committed to work for the protester if the firm were awarded the contract, but was not currently employed by the firm. The agency also determined that the protester's proposed project manager did not possess electronics experience deemed necessary for maintaining and repairing the facility's complex security systems; that the protester did not adequately address the SOW requirements involving the closed circuit television (CCTV) surveillance system and the uninterruptable power supply (UPS) system; and that the protester did not adequately address a phase-out transition plan.

The protester challenges the rejection of its proposal as technically unacceptable, contending that the rejection, primarily due to a perceived lack of corporate and personnel building maintenance experience, was tantamount to a finding of nonresponsibility which should have been referred to the Small Business Administration (SBA) under its certificate of competency (COC) procedures.

As the protester correctly asserts, the Small Business Act prohibits agencies from finding, under the guise of a technical evaluation, that a small business is nonresponsible and thereby avoid referring the matter to the SBA, which has the ultimate authority to determine the responsibility of a small business concern. See 52 Comp. Gen. 47 (1972). However, where an agency rejects a proposal as technically unacceptable for reasons not related to responsibility as well as for reasons that properly would be categorized as relating to responsibility, referral to the SBA is not required. Paragon Dynamics, Inc., 72 Comp. Gen. 142 (1993), 93-1 CPD ¶ 248; Department of the Navy--Recon., B-244918.3, July 6, 1992, 92-2 CPD ¶ 199. Thus, our decision rests on whether the agency's rejection of the protester's proposal as technically unacceptable was based solely on responsibility concerns. We conclude that the rejection of the protester's proposal was not based solely on such factors.

The agency questioned the protester's ability to satisfy the SOW's building maintenance requirements on the basis of a

perceived lack of corporate and personnel experience, a responsibility-related concern.³ However, the record also shows that the agency determined that the protester's proposal was deficient in demonstrating the firm's understanding of building maintenance requirements and in describing its technical approach for performing building maintenance requirements involving the CCTV and UPS systems. The agency characterized the protester's proposal for performing building maintenance requirements as one of "trial and error," stating that the protester essentially repeated the SOW requirements without providing specific details for accomplishing the requirements.

For example, the RFP advised that proposals should be specific and detailed, and not merely offer to perform the work in accordance with the SOW or repeat the SOW without sufficient elaboration. A review of the protester's proposal supports the agency's position that the protester failed to adequately demonstrate its understanding of the building maintenance requirements and meeting to adequately describe its technical approach for performing these requirements. In this regard, the protester states in an introductory section of its proposal that:

"[t]o avoid mere repetition of the SOW and in the interest of ease of reading and evaluation, we have limited our detailed descriptions to those SOW requirements where additional elaboration and explanation would clearly add to your understanding of our approach. For all areas of the SOW, A & W hereby specifically concurs with the requirements and commits to performance of them to the standards specified."

We agree with the agency that the protester's decision to select SOW requirements which it would address in its proposal and its cursory reaffirmation of the SOW requirements in general does not constitute an adequate demonstration of the protester's understanding of the requirements or an adequate description of its technical approach.

³In response to the protest, the agency concedes that the protester's proposed project manager satisfied the experience requirements in the SOW, and agrees with the protester's position that corporate experience is dependent upon the experience of a firm's personnel. The agency points out, however, that the protester's proposed project manager is not a current employee of the firm, and that the protester, while stating that it will use the same technical approach as under its predecessor contract, did not perform building maintenance services under this contract.

Moreover, in characterizing the protester's proposal for performing building maintenance requirements as one of "trial and error," the agency had specific concerns with the protester's approach for maintenance of the CCTV and UPS systems. With regard to CCTV system maintenance, the protester outlines "possible courses of action that may be necessary for this equipment," stating that most periodic maintenance functions will be performed at the facility by the firm's personnel. The protester continues that when specialized bench work requiring equipment or time beyond its resources is necessary, substitute equipment, including if-available government-owned spare equipment, would be provided in accordance with the work order protocol.

The agency believed that the above approach, which assumes the availability of substitute and government-owned spare equipment, does not provide adequate assurance of prompt replacement or repair of the CCTV equipment. Since the CCTV system is critical to the facility's mission, we think the agency reasonably could conclude that the protester's proposal does not reflect a sufficiently concrete plan for maintaining the system.

With regard to the UPS system (described by the agency as a series of batteries and diesel generators that ensure, in the event of any external power failure, that there is no interruption of electricity to the floor equipment deemed critical to the facility's operations), the protester states that most of the routine maintenance could be performed by its project manager, but it included the estimated cost of a maintenance contract for this system with the current subcontractor. The protester also simply states that the equipment will be maintained to the original specification standards of performance.

In our view, the agency reasonably found that the protester does not adequately explain how the project manager would accomplish the maintenance work or how the subcontractor would be used. There is no specific explanation of when the project manager or subcontractor would be used for maintenance. Given the significance of the UPS system in ensuring the continuing mission operations in the event of any external power failure, and the importance of regular preventive maintenance and battery replacement to ensure continuous system power and reliability, we think the agency's concerns regarding the protester's proposal were proper.

Finally, the protester makes continuing reference to its "white glove" approach as the incumbent contractor for grounds maintenance and custodial services as the standard by which it will perform building maintenance services. However, as the agency reasonably could conclude, the use of

this slogan-type description fails to recognize the significant technical difference between performing grounds maintenance and custodial services and maintaining mission-critical electrical systems. Further, this description fails to demonstrate the protester's understanding of the building maintenance requirements or its approach for the performance of these requirements, which were not part of its predecessor contract.

An offeror in a negotiated procurement generally must demonstrate within the four corners of its proposal that it is capable of performing the work upon terms most favorable to the government. See ImageMatrix, Inc., B-243367, July 16, 1991, 91-2 CPD ¶ 61. Where, as here, offerors are advised that technical proposals should be specific and complete in every detail; should not merely offer to perform work in accordance with the SOW, but should outline the actual work proposed as specifically as possible; and should not merely repeat the SOW without sufficient elaboration, we believe it was reasonable for the agency to conclude that the protester's proposal was technically unacceptable based on the firm's failure to demonstrate an adequate understanding of the SOW requirements for building maintenance services and to adequately describe its approach for performance of these requirements. That being so, there was no requirement for a COC referral since responsibility-type concerns were not solely the basis for the rejection.⁴

While the protester also complains that it received only written discussions, while DCT received both oral and written discussions, we do not think the protester was competitively disadvantaged. In this regard, there is no requirement that an agency conduct both oral and written discussions with a firm. In this case, the record suggests that the agency attempted to conduct oral discussions with the protester, but its president, the individual authorized to conduct discussions on behalf of the firm, was unavailable during the period in which the agency conducted oral discussions. Nevertheless, the record shows that the protester received 27 written discussion questions/informational statements from the agency, (two times as many written discussion questions/informational statements as received by DCT). The record shows that the protester received detailed questions on all material areas of concern to the agency. Both the protester and DCT were afforded an opportunity to submit a BAFO, making appropriate changes to their proposals based on the matters addressed during discussions. We believe the protester had the same opportunity as DCT to submit a technically acceptable proposal. See, e.g., Ways, Inc., B-255219, Feb. 17, 1994, 94-1 CPD ¶ 120.

The protester further contends that the competition was not conducted in an equal manner because the agency afforded DCT an additional opportunity, after the protester's proposal was rejected as technically unacceptable, for discussions and to submit another BAFO. We see nothing improper here. The protester's proposal was properly rejected as technically unacceptable and no longer having a reasonable chance for award, while DCT's proposal was rated as acceptable, with the agency having concern only over the lack of an updated resume for the individual DCT proposed, in its BAFO, for the project manager position. Since only DCT's proposal now remained in the competitive range, the agency's decision to conduct another round of discussions only with DCT is unobjectionable.

The protest is denied.

Ronald Berger
for Robert P. Murphy
General Counsel