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Decision

Matter of: Mission1st Group, Inc.

File: B-404811.3; B-404811.6

Date: June 2, 2011

David S. Cohen, Esq., John J. O'Brien, Esq., and William J. Bainbridge, Esq., Cohen Mohr LLP, for the protester.

Brian A. Darst, Esq., and Matthew R. Keller, Esq., Odin, Feldman & Pittleman, PC, for Engineering Services Network, Inc.; and Robert E. Gregg, Esq., and Karen R. Harbaugh, Esq., Squire, Sanders & Dempsey (US) LLP, for NetCentrics, the intervenors.

Maj. James W. Nelson, and Brenda Oswalt, Esq., Department of the Army, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably eliminated proposal from consideration for award where the proposal failed to conform to material terms of the solicitation.

DECISION

Mission1st Group, Inc. (M1), a small business, protests the elimination of its proposal from consideration for award under request for proposals (RFP) No. W91QUZ-08-R-0011, issued by the Department of the Army for information technology services.

We deny the protest.

The RFP was issued on March 25, 2009 as a total set-aside for small business, to establish a multiple award indefinite-delivery/indefinite-quantity (ID/IQ) contract for a range of services and solutions necessary to implement the agency's enterprise infrastructure and infostructure goals. To achieve this end, the RFP sought to enter into "performance-based" arrangements with successful offerors. The RFP noted that establishing performance based arrangements introduced several changes from traditional procurement approaches, including the use of a statement of objectives (SOO) rather than a statement of work. RFP, Section L, at 1. Under a SOO, the

government describes its requirements in terms of desired objectives, and offerors are free to propose solutions that they believe will best meet or exceed those objectives. After award, the agency monitors and evaluates contractor performance using performance metrics established by the contract. These metrics gauge a contractor's level of success in meeting SOO objectives, and provide for performance-related incentives and disincentives. See Id. at 11; Contracting Officer's Statement of Facts (COSF), at 18. The RFP also advised that the agency contemplated making award without discussions. RFP, Section 1, at 1.

According to the RFP, the awards would be made to offerors with proposals determined to be the most beneficial, considering three evaluation factors: mission support, performance risk, and price. RFP, Section M, at 2-3. The mission support factor consisted of three subfactors: corporate capability, management approach, and quality control programs. Id. at 2.

Pursuant to the RFP, under the management approach subfactor, offerors were to identify performance metrics for each objective identified in the SOO using "Table 1 – Performance Metrics." RFP, Section L, at 9. Table 1 contained a space for each objective, and spaces for corresponding sets of performance metrics consisting of "Measures and Metrics; Acceptable Level of Quality (ALQ); and the contract level Incentives (non-monetary)/Disincentives." Id. In each case, the objectives were pre-printed within the table. Additionally, for three of the objectives, the RFP set forth government-specified measures, metrics, and ALQ, also pre-printed within the table. Id.

As relevant, the pre-printed objective at entry 1.c of Table 1 stated as follows, "[i]ncrease use of small business subcontractors and teaming partners to bring expert talent and ingenuity to the varied work under ITS-SB." Concerning the pre-printed objectives, measures, metrics, and ALQ, the RFP cautioned offerors,

Note: With one exception [not relevant to this protest], the Offeror shall not change the Objectives, Measures and Metrics, and Acceptable Level of Quality listed in Table 1 – Performance Metrics, below.

RFP, Section L, at 9 (emphasis original).

Under the price evaluation factor, the RFP required offerors to complete a "master labor rate table" as well as a "price model spreadsheet." RFP, Section J, Attachments 7-8. With regard to the master labor rate table, the RFP instructed that each offeror

shall enter ALL fully loaded labor rates proposed by the Offeror's Team, both prime and all subcontractor rates, for each labor category in the base year column of the Government Site and Contractor Site Sections.

RFP, Section L, at 17. To complete the price model spreadsheet, offerors were instructed to select the highest-proposed fully-loaded labor rate for each category from the master labor rate table, whether subcontractor or prime, and enter that rate into the price model. The RFP further stated that each offeror “shall provide fully loaded labor rates for the price model categories and provide personnel for the proposed rates that meet the requirements of each labor category. . . .” Id. Amendment 3 to the RFP further instructed offerors that, “A Base Period – Year 1 labor rate MUST be proposed for each labor category. RFP, Amendment 3, at 3.

The agency received fifty proposals in response to the RFP. The agency made award without discussions on February 15, 2011, and M1 received its debriefing on February 16. During the debriefing, M1 learned that its proposal had received a red/unacceptable rating under the management approach subfactor, which resulted in a red/unacceptable rating for the entire mission support evaluation factor. M1 also learned that the agency considered its price proposal to be deficient. These factors led to the agency’s determination that M1’s proposal was unacceptable overall. More specifically, the agency determined that M1 had improperly modified objective 1.c of Table 1 by omitting the phrase “small business.” Debriefing, at 46. The agency determined that this omission materially altered the objective, and therefore failed to conform to a material term of the RFP. With regard to M1’s price proposal, the agency concluded that it was unable to calculate M1’s evaluated price because M1 had neglected to propose rates for certain labor categories required by the RFP.

M1 protests that the agency’s assessment of a deficiency under the mission support subfactor was improper because, in its view, its inadvertent omission of two words from objective 1.c of Table 1 did not constitute a material omission from its proposal. M1 argues that the error in one entry, in one table, in one sub-subfactor of the mission support subfactor did not provide a basis for concluding that its proposal was unacceptable, and should have been viewed as a minor weakness. M1 additionally contends that the agency’s assessment of a deficiency under the price evaluation was improper because M1 did, in fact, propose rates for all labor categories required by the RFP. M1 claims that the agency misinterpreted its proposal, and argues that its proposal offered certain labor categories at no cost.¹ We disagree.

¹ M1 also protests the assessment of two significant weaknesses against its proposal. However, given our conclusions with regard to M1’s primary protest grounds, M1’s proposal was unacceptable, and we need not address these protest grounds. Additionally, M1 filed a supplemental protest following its review of the agency report, in which it claimed that certain communications from the agency were materially misleading. We dismissed this supplemental protest as both untimely, and failing to provide information to establish a valid basis of protest, where the

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Management Support Subfactor

Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to material terms is unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. It is a fundamental principle in a negotiated procurement that a proposal that fails to conform to a material solicitation requirement is unacceptable. See TYBRIN Corp., B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5. Here, we conclude that the objectives set forth in Table 1 were material requirements of the RFP, and that the agency reasonably determined that M1 improperly modified an objective in a manner that did not conform to the terms of the RFP.

Under a performance-based contracting arrangement, such as here, performance metrics are more than mere proposal evaluation tools. Rather, the metrics become the standards used to assess the contractor during performance, and to determine the application of contractor-proposed performance incentives and disincentives. Indeed, the objectives, measures, metrics, ALQ, and incentives/disincentives serve to establish the performance levels that are required to meet the needs of the agency, as specified in the SOO, and are critical aspects of the resulting performance-based contract. In this case, the agency pre-printed Table 1 – Performance Metrics with statements of its objectives, and repeatedly cautioned offerors that these objectives were not to be revised. Such clearly stated RFP terms, which establish the obligations of the parties during performance, are undoubtedly material to the needs of the government; failure to conform to these terms rendered this proposal unacceptable.

Here, the objective, “[i]ncrease use of small business subcontractors and teaming partners to bring expert talent and ingenuity to the varied work under ITS-SB,” was clearly focused on increasing the use of small business subcontractors and teaming partners, rather than subcontractors and teaming partners generally. See COSF, at 18. In contrast, the modified objective proposed by M1, “[i]ncrease use of subcontractors and teaming partners to bring expert talent and ingenuity to the varied work under ITS-SB,” makes no reference to small business, and thus entirely fails to reflect the import of the agency’s objective.

This failure to reflect the agency’s objective is even more clear when one considers M1’s proposed measure, metric and ALQ for objective 1.c. As its measure for objective 1.c, M1 proposed an “[i]ncrease in the amount of work shared with M1 partners.” As its metric, M1 proposed “total M1 direct labor performed by

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communications in question were contained in an RFP amendment transmitted to all offerors.

subcontractors compared to the total direct labor.” Finally, as its ALQ, M1 proposed “base period minimum [DELETED]% [Option] Period minimum [DELETED]%.” Proposal, Volume 1, at 21-22.

Our review of M1’s proposal leads us to conclude that none of these performance metrics conform to the agency’s objective of increasing the use of small businesses. Turning to M1’s subcontractor participation goals, M1 proposed to subcontract a minimum of [DELETED] percent of the work under the contract, consisting of [DELETED] percent to small business subcontractors, and [DELETED] percent to large business subcontractors. *Id.*, Volume 4, Section 2, at 3. Thus, M1’s performance metrics for Objective 1.c, along with its omission of the phrase “small business” from the objective itself, would enable M1 to meet objective 1.c by subcontracting [DELETED] percent of the work under the contract to a combination of small businesses or large businesses. More importantly, in the option years, the proposed metric would allow M1 to meet its increased target of [DELETED] percent subcontracting by expanding subcontracting solely to large businesses, which clearly fails to meet the agency’s actual objective of increasing the use of small business subcontractors, as set forth in the SOO, and in Table 1.

M1 next argues that despite any failure to meet the requirements of the RFP under objective 1.c, it should not have received a deficiency because it agreed to meet the agency’s subcontracting objectives elsewhere in its technical proposal. For example, M1 correctly stated the agency’s objective under entry 1.d of Table 1, “[e]ffectively use small business to assure achievement of subcontracting targets allowing mentorship of small business.” *Id.*, Volume 1, at 22. M1’s commitment to meet the agency’s intended objective under 1.d of Table 1, however, relates to its proposed minimum small business subcontracting target. This is fundamentally different from the import of objective 1.c of Table 1, which related to increasing small business usage over the life of the contract. Given the inherent difference, there is no basis to conclude that the agency’s evaluation was unreasonable.

Finally, M1 asserts that the agency was required to allow M1 the opportunity to correct its error through clarifications. Clarifications are limited exchanges between the agency and offerors that may occur where, as here, contract award without discussions is contemplated. FAR § 15.306(a). An agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. *Id.* However, clarifications may not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or revise the proposal. *Superior Gunite*, B-402392.2, Mar. 29, 2010, 2010 CPD ¶ 83 at 4. Because the omission of the phrase “small business” was both a material omission and a deficiency, the error was not subject to correction via clarifications.

Price Evaluation Factor

With regard to the price evaluation, M1 contends that the agency misinterpreted its proposal when it determined that M1 had neglected to provide rates for certain required labor categories.² M1 argues that, in fact, it exercised its business judgment when it offered certain labor categories at no cost to the government—a rate of “\$0.00”—where M1 considered it unlikely that the labor category would be heavily utilized. M1 states that this approach to the price proposal was not prohibited by the RFP, and has been upheld in prior decisions by our Office. Based on our review of the record, as explained below, we find that the agency reasonably concluded that M1 failed to offer certain required labor categories.

On the first page of its price proposal, M1 states,

Mission1st Group, Inc. has exercised best management practices, business judgment and corporate experience in electing to decline to provide pricing rates for certain proposed labor categories (e.g. Associate Program Manager)

Proposal, Volume 3, at 1. According to M1, this language was not intended to indicate that M1 was declining to offer certain required labor categories, but that M1 was declining to price those labor categories and was offering those labor categories at no cost. This contention, however, is not supported by the price model and master labor rate table submitted with M1’s proposal.

The price model and master labor rate table both identified specific labor categories, and for each category there were corresponding entry blanks where offerors were required to identify the team members offering to provide that category and a labor rate. For certain labor categories on the master rate table, M1 entered the name of its proposed team members followed by a single dash mark in the blank provided for the corresponding labor rate. These entries support M1’s contention that it was offering the labor category at no cost. For other labor categories on the master rate table, M1 entered “N/A” rather than the name of a team member, followed by a single dash for the labor rate. This latter practice continued in the price model. In fact, for 10 of the 77 required labor categories in the price model, M1 entered “N/A” rather

² M1 also contends that the alleged price proposal deficiency was not documented in the contracting officer’s evaluation report, and that the evaluation record is therefore insufficient. While M1 is correct that a deficiency was not assessed in this area in the contracting officer’s evaluation, the procurement record also contains a separate price evaluation that does identify the deficiency. Price Report, at 16. The deficiency is also noted in the source selection decision document. Source Selection Decision Document, at 24.

than the name of a team member offering the labor category, and “\$0.00” as the labor rate.

In our view, M1’s failure to specify the name of a team member and a labor rate, together with its statement that it was declining “to provide pricing rates for certain proposed labor categories,” provided the agency with a reasonable basis to conclude that M1 failed to offer certain required labor categories, that its price proposal was therefore deficient, and its proposal unacceptable. It is an offeror’s responsibility to submit a well-written proposal, which clearly demonstrates compliance with the solicitation. International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7.

The protest is denied.

Lynn H. Gibson
General Counsel