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## Decision

**Matter of:** 2H&V Construction Services, LLC

**File:** B-405290

**Date:** September 1, 2011

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Janice M. Theriot, Esq., and John H. Dwyer, Jr., Esq., Zielke Law Firm PLLC, for the protester.

Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., and Ryan C. Bradel, Esq., PilieroMazza PLLC, for LM2 Construction Company, Inc., an intervenor.

Andre Ahuna, Esq., Department of the Navy, for the agency.

Christina Sklarew, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. In a negotiated procurement that provided for award to the lowest-priced, technically acceptable proposal, the agency reasonably found the protester's proposal to be technically unacceptable where the protester failed to address a number of required elements under an evaluation factor.

2. Protest of an agency's waiver of a certification requirement for the awardee is denied where the protester was not prejudiced by the waiver.

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### DECISION

2H&V Construction Services, LLC, of Bonifay, Florida, protests the award of a contract to LM2 Construction Company, Inc., of Anaheim, California under request for proposals (RFP) No. N40192-11-R-2900, issued by the Naval Facilities Engineering Command, Department of the Navy, for painting and related services. 2H&V argues that its proposal was improperly rejected by the agency as unacceptable and that the agency improperly waived a certification requirement.

We deny the protest.

## BACKGROUND

The RFP, issued as a service-disabled veteran-owned small business set-aside, anticipated the award of an indefinite-delivery/indefinite-quantity (IDIQ) contract for painting of buildings and pavement markers at various federal government installations and buildings on Guam. Detailed specifications were provided for the performance of the contract work. Among other things, the contractor and all subcontractors that would perform surface preparation or apply coatings were required to have a QP-1 certification from the Society for Protective Coatings (formerly the Steel Structures Painting Council) prior to award. See RFP, Specification 09-90-00, § 1.3.2.

Offerors were informed that award would be based on the lowest-priced, technically acceptable proposal. RFP at 29. The RFP stated that technical acceptability would be evaluated under the following four factors: experience, past performance, safety, and management plan. Offerors were cautioned that an unacceptable rating under any factor would result in an unacceptable overall rating that would render the proposal ineligible for award. The RFP also informed offerors that the agency intended to make award without conducting discussions. RFP at 29-30.

For each evaluation factor, the RFP described the information that offerors were to provide and detailed how proposals would be evaluated. With respect to the management plan factor, at issue here, offerors were instructed to submit a narrative discussion, not exceeding 25 pages, addressing the following elements:

1. Describe the proposed management structure for this contract, clearly delineating the lines of authority, and include an organizational chart.
2. Discuss how you will ensure quality control and how it will be managed and maintained during the performance of work under the IDIQ.
3. Discuss how you will respond to proposed task orders that may have short notice site visits and/or response times for submitting a proposal.
4. Discuss how you will provide manpower, equipment, materials, and supplies to perform multiple task orders at various locations simultaneously.
5. Discuss how you will respond to client inquiries in a timely manner.

RFP at 34.

The agency received proposals from eight offerors, including 2H&V and LM2. The five lowest-priced offers were evaluated for technical acceptability. LM2's proposal, which was the lowest-priced, was found to be the only acceptable offer. 2H&V's proposal, which was the third-lowest priced, was found to be technically unacceptable under the management plan factor and overall. AR Tab 8, Business Clearance Memorandum (BCM), at 19, 21.

Specifically, the evaluators found that 2H&V primarily addressed only the first element of the management plan factor (management structure and lines of authority) and largely ignored the other four elements. The evaluators found that 2H&V's 4-page response to this evaluation factor did not discuss, among other things, how the firm would ensure quality control; how they would respond to proposed task orders with short notice site visits; how they would provide manpower, equipment, materials, and supplies to perform multiple task orders; and how they would respond to client inquiries in a timely manner. AR, Tab 8, BCM, at 7-8.

Following award to LM2, 2H&V filed an agency-level protest, challenging the evaluation of its own proposal and arguing that LM2 was not qualified to receive the award because it did not have a required certification. The agency denied the agency-level protest, confirming its original evaluation of 2H&V's technical proposal as unacceptable, and explaining that it had determined that this certification was not necessary. This protest to our Office followed.

## DISCUSSION

2H&V generally argues that its proposal adequately addresses the requirement for descriptive narrative under the management plan factor. The protester also contends that "any perceived deficiency in 2H&V's management plan could have been cured through exchanges under Federal Acquisition Regulation (FAR) §15.306." Protester's Comments at 6. In addition, 2H&V complains that the agency improperly waived the QP-1 certification requirement for LM2.

In reviewing protests challenging allegedly improper evaluations, or, as here, the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable, and in accordance with the solicitation criteria and applicable procurement statutes and regulations. Ira Wiesenfeld & Assocs., B-293632.3, June 21, 2004, 2004 CPD ¶132 at 2. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296945, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Any proposal that fails to conform to material terms of the

solicitation may be considered unacceptable and not form the basis for an award. Gordon R.A. Fishman, B-257634.3, Nov. 9, 1995, 95-2 CPD ¶ 217 at 2.

Here, the record shows that 2H&V's proposal failed to address a number of the management plan factor's required elements. Specifically, although the protester broadly stated that it will take whatever steps would be necessary to timely perform ordered work, it does not discuss how it would ensure quality control; how it would respond to short-deadline orders; how it would provide manpower, equipment, material or supplies to perform multiple task orders; or how they would respond to client inquiries in a timely manner. Given the protester's failure to address these elements as required by the RFP, we find that the agency reasonably determined that 2H&V's proposal was unacceptable under this factor and overall.

2H&V also argues, however, that it could have corrected any "perceived deficiency" in its proposal, if the agency had communicated with the firm pursuant to FAR § 15.306(b). Protester's Comments at 6. Section 15.306(b) of the FAR provides contracting officers with authority to conduct discussions with an offeror for the purpose of determining whether the offeror's proposal should be included in the competitive range. Here, however, agency did not and was not required under this RFP to conduct discussions before making award. Thus, there was no requirement that the Navy communicate with the protester with respect to the evaluated deficiencies in its proposal. See Silynx Commc'ns, Inc., B-310667, B-310667.2, Jan. 23, 2008, 2008 CPD ¶ 36 at 7.

The protester also challenges the acceptability of LM2's proposal, arguing that LM2 does not have a QP-1 certification, as required by the RFP.

In response, the Navy states that it erred in including the QP-1 certification requirement in the RFP. AR at 6. Specifically, the agency states that the QP-1 certification is used only for certain industrial and marine structures (such as bridges, food and beverage facilities, off-shore drilling, power generation facilities, chemical plants, storage tanks, ship maintenance, and waste water treatment facilities), "because of the complex nature of coating systems and the specific surface preparation required" for these structures. Id. The Navy states that the task order work will not require QP-1 certification and that it essentially waived this requirement for LM2.<sup>1</sup>

The protester disagrees that the inclusion of the QP-1 certification requirement was an error and asserts that waiver of the requirement was done to benefit the awardee. Comments at 4-5. The protester contends that compliance with the QP-1

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<sup>1</sup> The Navy also states that, in any event, one of LM2's subcontractors has the required certification.

certification requirement has a substantial impact on price and that GAO should presume that H2&V was prejudiced. Id. at 6.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996). Unfair competitive prejudice from a waiver or relaxation of an RFP's terms for one offeror exists where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements. See Vocus Inc., B-402391, Mar. 25, 2010, 2010 CPD ¶ 80 at 6. Here, 2H&V's proposal was found technically unacceptable for reasons wholly unrelated to the waiver of the QP-1 requirement. Accordingly, we find no reasonable possibility that the protester was prejudiced by the agency's waiver of this requirement.

The protest is denied.

Lynn H. Gibson  
General Counsel