



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: CMI Management, Inc.

File: B-408558

Date: November 8, 2013

Jerry A. Esq., Deale Services, LLC, for the protester.
Claude P. Goddard, Esq., Polsinelli PC, for FCi Federal, Inc., an intervenor.
Barbara Walthers, Esq., Department of Homeland Security, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably downgraded protester's technical proposal where proposal to furnish support services failed to satisfy solicitation requirements that offerors (1) describe the methods to be used to maintain daily operations at agency sites, and (2) justify what levels of staffing and skill mix would be necessary and appropriate to fulfill the performance work statement requirements.
 2. Agency reasonably downgraded protester's proposal under small business subcontracting factor where the discrepancies and errors in the proposal with regard to the use of subcontractors were such that the agency could not determine how proposed subcontractor goals were derived or whether offeror clearly committed to meeting the required small business subcontracting goal.
-

DECISION

CMI Management, Inc. (CMI), of Alexandria, Virginia, protests the Department of Homeland Security (DHS), United States Citizenship and Immigration Services' (USCIS), decision to exclude CMI's proposal from the competitive range under request for proposals (RFP) No. HSSCCG-13-R-00002, for field office support services. CMI asserts that the agency unreasonably evaluated its proposal.

We deny the protest.

BACKGROUND

The field office support services (FOSS) contract will provide support to the USCIS Field Operation Directorate and the Fraud Detection and National Security Directorate at offices throughout the United States. Tasks under the contract include correspondence management, file operations and maintenance, data reviews and updates, interview scheduling, certificate production, ceremony support, interview preparation (organizing casework), and file retirement at the San Bruno Federal Records Center in California. RFP § I.B, Performance Work Statement (PWS); Contracting Officer's Statement (COS) at 1.

The current prime contractor for this requirement is FCI Federal, Inc. (FCi). CMI was the prior incumbent contractor providing field office support under the records support services contract, which ended more than three years ago (March 2010).

Award was to be made to the offeror whose proposal represented the "best value" considering the following four evaluation factors (in descending order of importance): (1) management capability, with subfactors for operational approach, staffing, management approach, and relevant corporate experience; (2) small business subcontracting, with subfactors for maximization of small business opportunities, participation in the DHS mentor-protégé program, and small disadvantaged business participation program targets; (3) past performance; and (4) price. RFP at 118. The non-price factors when combined were significantly more important than price. Id.

CMI and five other offerors submitted proposals. The contracting officer established a competitive range of the most highly-rated proposals, including only the proposals submitted by FCI and [Offeror A]. AR, Tab 15, Competitive Range Determination (CRD), at 3; see COS at 3. The proposals were evaluated in relevant part as follows:

Offeror	Management Capability	Small Business Subcontracting	Past Performance	Evaluated Price
CMI	Acceptable	Marginal	Low Risk	\$233,057,116
FCi	Good	Outstanding	Low Risk	\$227,068,333
Offeror A	Outstanding	Marginal	Low Risk	\$245,840,886

CRD at 3.

In her rationale for the competitive range determination, the contracting officer explained that FCI's and [Offeror A's] technical proposals "were the most highly rated," having been rated good and outstanding, respectively, under management capability, the most important evaluation factor. Id. at 7. In contrast, noted the contracting officer, CMI "would need to make significant changes to [its] technical or business proposals, or both, to become competitive, and given the technical superiority of the FCI and [Offeror A] proposals, would still not be likely to receive the

award.” Id.; see COS at 3. The contracting officer specifically noted that the technical evaluation committee (TEC) had identified several concerns with regard to CMI’s technical approach, including that “CMI basically cut and pasted sections of the RFP into its proposal to describe how it would perform daily operations, and indicated its staffing plan was developed based on its prior experience as the incumbent rather than using the current workload data.” CRD at 10. The contracting officer further noted that “CMI also proposed as ‘innovations’ technical approaches that had been tried and abandoned for not providing any efficiencies or value during performance.” Id. Upon learning of its exclusion from the competitive range, CMI filed this protest.

DISCUSSION

CMI challenges the evaluation of its proposal under every evaluation factor and subfactor except price. In reviewing an agency’s evaluation, we will not reevaluate technical proposals; instead, we will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and procurement statutes and regulations. Urban-Meridian JV, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror’s mere disagreement with the agency’s evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. We have considered all of CMI’s arguments and find that none provides a basis for questioning the exclusion from the competitive range. We address CMI’s most significant arguments below.

Management Capability

While the evaluators rated [Offeror A] and FCI as outstanding and good respectively under the management capability evaluation factor, they rated CMI only acceptable under this factor. CMI’s acceptable rating was based on a good rating for the management approach subfactor but acceptable ratings for the operational approach, staffing, and relevant corporate experience subfactors. CMI has not shown that its overall acceptable rating for management capability factor was unreasonable.

With respect to the operational approach subfactor under the management capability factor, the RFP requires offerors to “clearly address and describe” daily operations, including discussing a “concept of operations,” maintaining daily operations, why its proposed operational approach is workable and realistic, and the offeror’s approach to differences at the various sites. RFP at 99-100; see RFP at 120. The technical evaluation committee rated CMI’s proposal as acceptable under the operational approach subfactor based on two strengths and two weaknesses. AR, Tab 9, TEC Report, at 22-25. CMI asserts that its rating in this regard would have been good or outstanding but for the agency’s unreasonable assessment of weaknesses. As discussed below, we find the evaluation here to be reasonable.

As an initial matter, the technical evaluation committee assigned a weakness based on a concern as to CMI's understanding of present-day and future operations given its stated reliance on its past experience and knowledge gained under its prior, 3-year old records support services contract. AR Tab 9, TEC Report, at 23. In this regard, the technical evaluation committee noted that while CMI claimed in its proposal that "there have been no major changes in processes" since it was the incumbent for the records support services contract three years ago, in fact, according to the agency, "enough changes and initiatives have actually occurred that would negate some of the import of suggested improvements described" in CMI's proposal. Id.; see AR Tab 8, Technical Proposal, at 11. The technical evaluation committee concluded that it did not appear that CMI had a "firm grasp on changes that have occurred since its previous history on the former [records support services] contract." TEC Report at 24. As examples of CMI's failure to fully understand the current contract conditions, the technical evaluation committee cited CMI's use of "outdated labor category terms" such as the proposed [deleted], as well as such proposed innovations as CMI's approach to [deleted], which had already been implemented; its proposal to provide [deleted], which already existed; and its proposal to request [deleted], which was already mandatory. TEC Report at 24; CMI Technical Proposal at 13, 16, 21-22.

In response, CMI challenges the technical evaluation committee's focus on CMI's use of the "outdated" [deleted] labor category, TEC Report at 24, asserting that in its proposal it did not refer to [deleted] as a "labor category," but instead simply referred to it as a [deleted]. However, while CMI described a [deleted] which the agency viewed as a benefit by increasing employee skill/proficiency, TEC Report at 23, we think that the agency reasonably viewed the repeated references to [deleted] throughout CMI's technical proposal as indicating that this was a labor category proposed to perform the solicitation requirements. See, e.g., CMI Technical Proposal at 6, 10, 14, 17, 19-20, 25-26, 32-33, 37, 39, 74, 89.

We also find unpersuasive CMI's challenge to the technical evaluation committee's finding that certain CMI recommendations to improve existing processes were overtaken by more recent developments. TEC Report at 24. While CMI now asserts that it was aware that these proposed processes may not have been new practices, and that it was "simply demonstrating its understanding of current requirements and processes," Protest at 10, the discussion in the proposal suggested otherwise. For example, the fact that CMI discussed the benefits that would result from [deleted] (as it claimed to have done under its records services support contract) and from [deleted] reasonably suggested that it was seeking to justify a change in procedures rather than simply acknowledging its intended compliance with the current procedures. CMI Technical Proposal at 16, 21.

The technical evaluation committee assessed another weakness on the basis that, while the RFP required offerors to describe the methods to be used to maintain daily contract operations, RFP at 100, CMI repeatedly "cut and pasted" the text of

solicitation requirements into its proposal with “[l]ittle to no detail or methodology” as to “how daily operations would be maintained or managed according to timelines.” TEC Report at 24. In this respect, the agency cited a specific example of “parroting” back the solicitation with respect to a requirement in PWS § 4.9 for file retirement at the San Bruno Federal Records Center, one of nine overall contractor tasks (contract line item), where the agency found that CMI failed to furnish a plan on how to execute associated tasks and mitigate risks regarding file processing. Id.

An offeror is responsible for submitting an adequately written proposal, and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Carlson Wagonlit Travel, B-287016, Mar. 6, 2001, 2001 CPD ¶ 49 at 3. Further, an offeror’s extensive parroting of an RFP’s requirements may be considered as evidence of the offeror’s failure to demonstrate a clear understanding of those requirements. DRS C3 Systems, LLC, B-310825; B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 16. Here, CMI explained that it repeated information from the PWS “in order to inform the reader that [it] understood and would comply with requirements.” Protest at 12. However, while CMI generally denies that it parroted the PWS requirements,¹ our review of CMI’s proposal with respect to the San Bruno Federal Records Center confirms that while the PWS sets forth 17 specific requirements to be accomplished by the contractor, RFP at 40-41, CMI provided little or no amplification beyond the requirements stated in the RFP. Technical Proposal at 26. In these circumstances, we are unable to question the agency’s assessment of a weakness in this area.

With respect to the staffing subfactor of the management capability factor, the technical evaluation committee rated CMI’s proposal acceptable based on two strengths and two weaknesses. TEC Report at 25-27. CMI asserts that its rating under the staffing subfactor would have been good or outstanding but for the agency’s unreasonable assessment of weaknesses. CMI’s protest in this regard is without merit.

With regard to staffing, the RFP required that an offeror’s proposal “clearly address and describe” key personnel, staffing and retention of personnel, and contractor organization. RFP at 100; see RFP at 120-21. In particular, the RFP required that an offeror describe how its proposed organization “meets the needs of the [field office support services] program”; show the “locations, labor categories, number of FTEs [full time equivalents]”; “discuss and justify what levels of staffing and skill mix is sufficient and appropriate to fulfill PWS requirements”; and “provide a description for each labor category proposed.” RFP at 100.

¹ In this regard, CMI cites its discussion under PWS § 4.1 on correspondence management as evidence that it did not only engage in parroting.

The technical evaluation committee found that CMI did not provide the required justification for staffing levels, skills mix or labor categories, but rather stated in its proposal that “experience on previous staffing endeavors for the USCIS informs calibration between human resources and task requirements.” TEC Report at 26; see Technical Proposal at 46. The technical evaluation committee noted in this regard that no crosswalk was provided from the requirements in the PWS to the staffing level or skill mix, and expressed further concern that the [deleted] position, although discussed in detail in CMI’s proposal, nevertheless was not listed in any of the organization charts and staffing tables in the technical proposal. TEC Report at 26; see RFP at 100; CMI Technical Proposal at 46-48. In sum, the agency lacked confidence in CMI’s proposed staffing approach where the requirement for a detailed staffing justification was not satisfied and the primary labor position discussed in the technical proposal was not assigned FTEs. TEC Report at 26.

We find the TEC’s evaluation here to be unobjectionable. Our review confirms the reasonableness of the agency’s determination that CMI in its technical proposal did not satisfy the solicitation requirements to discuss and justify what levels of staffing and skill mix would be sufficient and appropriate to fulfill the PWS requirements. RFP at 100. Further, CMI’s technical proposal repeatedly referred to performance of the contract by employees designated as [deleted], when that position was not included in the organizational charts in that proposal showing proposed FTEs. CMI Technical Proposal at 40-48. Although CMI provided a crosswalk in its business proposal, showing the relationship between the [deleted] position and the general clerk labor categories set forth in the wage rate determination referenced in the solicitation, that crosswalk was not available to the technical evaluation committee because it was included in CMI’s business proposal and not in CMI’s technical proposal. COS at 6. While CMI argues that its proposal must be “considered a whole,” Protest at 16, CMI may not rely on information its business proposal to challenge the reasonableness of the agency’s evaluation of its technical proposal. Sam Facility Mgmt., Inc., B-292237, July 22, 2003, 2003 CPD ¶ 147 at 5. Offerors bear the burden for failing to submit an adequately written proposal, and contracting agencies evaluating one section of a proposal are not obligated to go in search of needed information which the offeror has omitted or failed to adequately present in the appropriate section of the proposal. Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 8.²

² The contracting officer points out that information in the business proposal was provided to the technical evaluation committee only if information in the technical proposal needed to be validated for consistency between the two proposals, and that providing information in the business proposal to the technical evaluation committee here would have circumvented the solicitation page restrictions on the technical proposal. COS at 6.

The technical evaluation committee assessed a further weakness in CMI's proposal under staffing on the basis that, instead of describing staffing levels based on current workloads as provided in the RFP, see RFP § VIII attach. A, A-1, CMI explained its staffing levels on the basis of its past experience. CMI Technical Proposal at 46; TEC Report at 26-27. As noted by the contracting officer, CMI's prior records support services contract was a time-and-materials contract, with additional performance incentives, while the contract here will be a hybrid time-and-materials and fixed-price contract, with no additional incentives. COS at 7. The contracting officer explains in this regard that:

Basing staffing levels and mix based on prior workloads for a different type of contract that posed little performance and profit risk to the contractor gave the TEC little confidence that the protester had proposed the right staffing levels and skill mix, particularly since protester performed the Records Support Service (RSS) contract, the predecessor to the FOSS contract, more than three years ago.

Id. Although CMI asserts that it was reasonable for it to consider its prior experience, we agree with the agency that this did not relieve it of the obligation to address the most recent workload as reported in the solicitation, nor did it relieve it of the obligation under the solicitation to discuss and justify what levels of staffing and skill mix is sufficient and appropriate to fulfill the current PWS requirements. We conclude that CMI was reasonably rated only acceptable under the staffing subfactor.

Small Business Subcontracting

While the evaluators rated FCi and [Offeror A] as outstanding and marginal, respectively, under the small business subcontracting evaluation factor, they rated CMI as marginal under this factor. CMI's marginal rating was based on marginal ratings for the maximization of small business opportunities and participation in the DHS mentor-protégé program subfactors, as well as an acceptable rating for the small disadvantaged business participation program targets subfactor. CMI has not shown that its overall marginal rating for small business subcontracting was unreasonable.

CMI's marginal rating under the maximization of small business opportunities subfactor was based on two significant weaknesses and one deficiency, with no strengths. Small Business Subcontracting (SBS) Report at 18. The agency assessed a significant weakness on the basis of inconsistencies in CMI's proposal between total claimed small business subcontracting dollars and the individual goals specified for each socio-economic category which made it impossible to evaluate or validate CMI's proposed subcontracting goals. SBS Report at 14-18; see Business Proposal at 2; 35-37, Attach. D, at 2. Further, the agency assessed a second significant weakness on the basis that the small disadvantaged business (SDB)

status of proposed CMI subcontractor [deleted] could not be verified, and that therefore the small business and SDB goals could not be calculated without further explanation about [deleted] SDB status. SBS Report at 15, 18. Finally, with regard to the RFP requirement that offerors commit to a goal to subcontract a minimum of 30% of the value of the contract to small business concerns, RFP at 106, the agency assessed a deficiency on the basis that CMI had incorrectly calculated its percentage of total contract value performed by small business concerns as 30%, when in fact the correct calculation was 26.5%, below the required goal. SBS Report at 17.

CMI challenges the evaluation in this regard on the basis that CMI should have had an opportunity to address these errors through clarifications. Protest at 20. FAR § 15.306 describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; 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. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. By contrast, discussions--which are to occur after establishment of the competitive range--involve the agency indicating to each offeror the significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to materially enhance the proposal's potential for award. FAR § 15.306(d)(3).

Where, as here, the agency establishes a competitive range to conduct discussions, the agency may conduct communications with an offeror to facilitate the agency's understanding and evaluation of the offeror's proposal or for the purpose of exploring whether a proposal should be included in the competitive range. See FAR § 15.306(b)(2). Such communications, however, cannot "be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal." Id.; Battelle Mem'l Inst., B-299533, May 14, 2007, 2007 CPD ¶ 94 at 4.

We agree with the agency that it was not required to seek clarifications from, or otherwise have communications with CMI, prior to the establishment of the competitive range. Int'l Medical Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 9-10; see JBlanco Enters., Inc., B-402905, Aug. 5, 2010, 2010 CPD ¶ 186 at 4, n.4. Moreover, it appears that the significant weaknesses and deficiencies in CMI's proposal under the maximization of small business opportunities subfactor could not properly be the subject of either clarifications or communications before the establishment of the competitive range, as this would require material revisions to CMI's proposal. Int'l Medical Corps, supra.

Conclusion

Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly-rated, or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); D&J Enters., Inc., B-310442, Dec. 13, 2007, 2008 CPD ¶ 8 at 2. CMI challenges the exclusion of its proposal from the competitive range on the basis that the agency misevaluated the proposal. As discussed, however, we find the evaluation to be reasonable. In these circumstances, where CMI's proposal reasonably was rated as only acceptable under the management capability factor, the most important evaluation factor, and marginal under the small business subcontracting factor, the second most important factor, we find no basis to question the determination that the proposal was not among the most highly-rated.

The protest is denied.

Susan A. Poling
General Counsel