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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Wahkontah Services, Inc.

File: B-292768

Date: November 18, 2003

John W. Starnes, Esq., for the protester.
Capt. Tami L. Dillahunt and Mary M. Townsend, Esq., Army Materiel Command, for the agency.
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DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of proposal from competitive range is denied where agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

Wahkontah Services, Inc. protests the exclusion of its proposal from the competitive range, and the subsequent award of a contract to Griffon Aerospace, Inc., under request for proposals (RFP) No. DAAH01-02-R-0158, issued by the Army Aviation and Missile Command, Department of the Army, for the acquisition of an aerial remotely piloted vehicle target (RPVT) system and services. Wahkontah contends that the evaluation of its proposal and the determination to exclude its proposal from the competitive range on the basis of technical noncompliance were unreasonable.

We deny the protest.

Background

RPVTs, essentially radio-controlled, sub-scale aerial targets, are a means by which the Army and other United States military services provide training to short range air defense units in countering airborne threats at a reasonable cost; specifically, RPVTs permit live fire engagements by forces equipped with various missile and gun weapons systems. Statement of Work (SOW) § 1.1. While the Army has procured sub-scale aerial targets for many years, the requirements here were significantly

expanded beyond those of previous procurements, including newly defined performance parameters that necessitated the redesign of the RPVT target aircraft. Contracting Officer's Statement at 2. In addition to RPVT design, production and testing, the statement of work here also required the successful offeror to provide various operational support services (e.g., flight operations, maintenance services, and equipment security) for the RPVT system.

The RFP, issued on October 31, 2002, contemplated the award of a fixed-price contract (with some cost reimbursement items) for a base year with four 1-year options. The solicitation identified the following evaluation factors and subfactors:

1. Technical	
	A. Design Approach
	B. Production Approach
	C. Engineering Services
	D. Resources, Personnel Skills and Staffing
2. Operational	
	A. Operational Approach
	B. Equipment Resourcing
	C. Surge (Premium Hour) Operations
	D. Resources, Personnel Skills and Staffing
3. Management	
	A. Organization
	B. Resources
	C. Personnel
4. Past Performance	
5. Price	

The RFP established that the technical, operational, past performance, and price factors were of equal importance, and that the management factor was significantly less important than the other factors.[1] The solicitation also specified that, "[i]nherent in the government's evaluation will be a consideration of potential risks, i.e., the risk of delivering technically acceptable equipment, meeting operation requirements, and satisfying other contractual requirements given the proposed approach. . . . Each [factor] shall incorporate consideration of risk in the evaluation." RFP § M-2.b.

The RFP informed offerors that "[p]roposals must address how the required effort will be performed and provide sufficient detail in each section to substantiate

[1] The solicitation also set forth the relative importance of subfactors within each evaluation factor. Relevant to this protest, design approach was more important than the remaining technical subfactors, and operational approach was significantly more important than the other operational subfactors.

compliance with the requirements of the RFP and its attachments"; additionally, "[o]fferors are cautioned that parroting of the technical, operational, and management requirements with a statement of intent to perform or statement of compliance only (i.e., will comply) does not reveal an understanding of the requirements and will not be acceptable." RFP § L.2.1.

Award was to be made to the responsible offeror whose proposal was determined to be most advantageous, or "best value," to the government, all factors considered. RFP § M-2.a.

Four offerors, including Wahkontah, submitted proposals by the March 5, 2003 closing date. An Army technical evaluation team (TET) evaluated offerors' proposals under the technical, operational and management factors using an adjectival rating system: outstanding/very low risk, highly satisfactory/low risk, satisfactory/acceptable risk, marginal/acceptable with some risk, and unacceptable/ unacceptable risk.[2] After the initial review of proposals, the Army conducted written discussions with all offerors by advising them of "errors, omissions, and clarifications" (EOC) that the agency had identified in their proposals. The Army provided Wahkontah with 42 EOCs, 41 of which related to the technical and operational aspects of the offeror's proposal, identifying various information shortcomings that Wahkontah was asked to address.

The TET completed its initial evaluation of technical proposals after receipt and review of each offeror's EOC responses. With regard to Wahkontah, the TET rated the offeror's proposal as unacceptable/unacceptable risk under the technical and operational factors, and satisfactory/acceptable risk under the management factor.[3] Agency Report (AR), Tab K-1, Technical Evaluation Report for Wahkontah, at 1-12. The evaluators noted numerous "deficiencies" and "weaknesses" in Wahkontah's proposal as to the technical and operational factors and subfactors, primarily the result of the offeror's extensive parroting of the RFP requirements, and concluded that Wahkontah's proposal failed to demonstrate a clear understanding of those requirements. Id. at 1, 7.

The contracting officer then established a competitive range, representing the lowest-priced, highest-rated proposals. The Army eliminated Wahkontah's proposal from the competitive range because it was determined unacceptable as to both the technical and operational factors, and had no reasonable chance of receiving

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[2] The agency also employed a performance risk assessment group (PRAG) to separately evaluate offerors' past performance using ratings of high risk, medium risk, low risk, and neutral.

[3] The PRAG rated Wahkontah, a new entity, as neutral under the past performance factor. AR, Tab M, Performance Risk Assessment Group Report, at 13-14.

contract award. AR, Tab N, Competitive Range Findings and Determination, at 5-7, 17.

Wahkontah filed an agency-level protest when it learned of the Army's decision, and filed the instant protest with our Office after receiving the agency's response and notice of the award to Griffon. Wahkontah maintains that the Army's evaluation of its proposal with regard to the technical and operational factors was unreasonable, and, as a result, the agency had no reasonable basis for eliminating its proposal from the competitive range.

In reviewing protests challenging the evaluation of proposals and exclusion of proposals from a competitive range, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation evaluation criteria. Information Sys. Tech. Corp., B-291747, Mar. 17, 2003, 2003 CPD ¶ 72 at 2; Northwest Procurement Inst. Inc., B-286345, Nov. 17, 2000, 2000 CPD ¶ 192 at 5. Where a protest concerns an agency's evaluation and exclusion of a proposal from a competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the agency's competitive range determination, and in this regard, a protester's mere disagreement with an agency's evaluation does not establish that the evaluation was unreasonable. Americom Gov't Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4.

Contracting agencies are not required to retain a proposal in a competitive range where the proposal is not among the most highly rated or where the agency otherwise reasonably concludes that the proposal has no realistic prospect of award. Federal Acquisition Regulation (FAR) § 15.306(c)(1); Americom Gov't Servs., Inc., supra; SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5-6. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. American Med. Depot, B-285060 et al., July 12, 2000, 2002 CPD ¶ 7 at 6-7.

Based upon our review of the record, the Army's evaluation of Wahkontah's proposal and the subsequent exclusion of Wahkontah's proposal from the competitive range were reasonable. The record reflects that Wahkontah's proposal was downgraded in large part because the information provided either parroted back in whole or part the RFP's requirements, with a statement of Wahkontah's intent to perform the requirements, or simply lacked sufficient information and detail for the Army to determine that Wahkontah understood the RFP's requirements. Although we do not here specifically address all of protester's complaints about the evaluation of its proposal, we have fully considered all of them and find that they afford no basis to question the agency's competitive range decision.

For example, offerors were required to describe in their proposals their RPVT design approach, including trade-offs and down-selection considerations to the basic RPVT airframe, and to provide calculations to verify that their airframe would meet the aerodynamic, stability and control, and handling qualities requirements of the RFP.[4] In its proposal, Wahkontah stated that its RPVT would exactly meet all performance requirements (e.g., compare "[t]he aircraft shall be capable of operating in flight for 60 minutes at varied speeds without landing or refueling," SOW § 3.6.1.1.3, with "[Wahkontah's] RPVT is capable of operating in flight for 60 minutes at varied speeds without landing or refueling. . . .," AR, Tab G-1, Wahkontah's Technical Proposal, at 18), but did not provide any airframe calculations or other data to support those statements. While Wahkontah's EOC response to this identified deficiency asserted various performance parameters for its RPVT, Wahkontah again did not provide any data or calculations in support for those assertions.

The Army properly found that Wahkontah's proposal did not meet the RFP's design approach requirement, and was unacceptable, because it failed to include the required RPVT aerodynamic calculations that would support the offeror's claimed capabilities. Without that supporting information, Wahkontah's statements amounted to no more than a blanket offer of compliance. Such blanket offers are not adequate substitutes for the detailed and complete information necessary to show that what the offeror proposes will meet the agency's needs. Diamond Aircraft Indus., Inc., B-289309, Feb. 4, 2002, 2002 CPD ¶ 35 at 4; Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 6.

As another example, the solicitation required that each offeror's proposed RPVT include an infrared (IR) enhancing device, for use in both the tracking and live fire of heat-seeking weapon systems, such as the Stinger missile system. The RFP required that the IR payload device be mounted on the RPVT such that it was surrounded by at least 8 inches of solid material to ensure missile strike and subsequent detonation. SOW § 3.8.5. In its proposal, Wahkontah stated that its IR payload would be incorporated into the engine muffler, thereby providing the entire mass of the engine block, crankshaft, flywheel, cylinder head and all engine parts as a detonation source for missiles. Wahkontah's proposal also represented that its RPVT engine had demonstrated many times in the past that it had sufficient mass to detonate a Stinger missile. Absent from Wahkontah's proposal was any information that its IR payload would in fact be surrounded by at least 8 inches of solid material. While Wahkontah's EOC response stated that its IR enhancement device would be surrounded by 8 inches of solid material, it provided no support for this assertion.

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[4] Specifically, proposals were to include key performance parameters, with and without worst-case payloads, such as cruise conditions, range, endurance, rate of climb, time to climb, maximum and minimum airspeeds, take-off (launch), landing (recovery), maneuvering and flight envelopes, power-off glide angle, stability and control, and operator handling qualities. RFP § L.2.2.1.1.

Again, the Army reasonably found Wahkontah's proposal deficient and unacceptable in this regard because it simply parroted the RFP requirement and failed to substantiate compliance. Quite simply, the agency was not required to accept Wahkontah's knowledge and experience with missile detonation as a substitute that compliance with the RFP requirements be established in the offeror's proposal. See Diamond Aircraft Indus., Inc., supra.

Wahkontah argues that its proposal fully meets and/or exceeds the RFP's technical and operational requirements, and does not reflect an unacceptable risk to the agency. Wahkontah acknowledges, however, that its proposed design is presently a concept of its knowledgeable and experienced designer and reflects a concept of the components required to assemble a workable end item, the final selection of which Wahkontah would make after contract award. Protester's Comments, Encl. 1, at 2-3, 6, 13-14. Wahkontah also argues that it did not need to provide any analytical and test data to support its proposed RPVT design approach because, as the RFP required a new design and Wahkontah was not yet under contract, none was available. Id. at 2, 13-14. Finally, Wahkontah asserts that the "only true way" that its contention of compliance with the solicitation's requirements can be disputed by the agency is by a failure to meet the post-award hardware performance compliance demonstration test. Id. at 2. We disagree.

The protester's argument that the Army must essentially disprove Wahkontah's assertions of compliance fundamentally misunderstands what was required by the solicitation. It is not the obligation of the agency to disprove an offeror's blanket contentions of compliance; instead, it is the obligation of the offeror to include sufficient information in its proposal for the agency to determine whether the proposal will meets its needs. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 9. The fact that an offeror may have to incur costs in order to provide sufficient information with its proposal to substantiate compliance with the solicitation's requirements does not alter this responsibility.

As a final example, the RFP required offerors to describe in their proposals their operational approach. In the area of equipment transportation, Wahkontah's proposal contained numerous statements, such as "Wahkontah will provide all equipment transportation to support activity under this contract unless otherwise directed," and "Wahkontah will plan, coordinate, schedule and execute all modes of shipment to transport all items from their point of origin to Wahkontah's home facility (Barstow, CA) for delivery to the government and stored as GFE," AR, Tab G-1, Wahkontah's Technical Proposal, at 61, which essentially recited back to the Army the corresponding provisions of the solicitation. See SOW § 3.4.12.2 ("The contractor shall provide all equipment transportation to support activity under this contract unless directed otherwise herein"); SOW § 3.4.12.2.1 ("The contractor shall coordinate, schedule, and execute all modes of shipment required to transport the items acquired from their point of origin to the location specified in this contract for delivery to the government").

In the Army's view, and we agree, Wahkontah's proposal here simply reiterated the RFP requirements, contained few details on the offeror's approach to meeting proposal claims, and failed to demonstrate that the offeror actually understood the requirements. AR, Tab K-1, Technical Evaluation Report for Wahkontah, at 11. In light of the explicit solicitation requirement that each proposal address how the offeror would perform the required efforts and provide sufficient detail to substantiate compliance, the agency reasonably downgraded Wahkontah's proposal under the operational factor both for merely parroting back the RFP's performance parameters and for failing to provide any substantiating data or detail. See Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578 at 4.

Under these and the other evaluation areas questioned by Wahkontah, the record shows that the Army's evaluation was reasonable and consistent with the solicitation criteria; Wahkontah's objections essentially reflect its view that based on the long and extensive experience of its personnel, its proposal should have received a higher rating. This self-assessment and Wahkontah's resulting disagreement with the agency's assessments do not provide a basis to call into question the agency's evaluation here. Fishermen's Boat Shop, Inc., B-287592, July 11, 2001, 2001 CPD ¶123 at 4-5. Having determined that the agency's evaluation of Wahkontah's proposal was reasonable, we find no basis to question the subsequent exclusion of Wahkontah from the competitive range.

Lastly, Wahkontah protests that the contract award to Griffon is inconsistent with the terms of the solicitation because it does not represent the "best value" to the agency. Since we have concluded that Wahkontah was properly excluded from the competitive range, however, and there are other offerors in the competitive range, Wahkontah is not an interested party to raise this issue. 4 C.F.R. § 21.0(a) (2003); McDonald Constr. Servs., Inc., B-285980, B-285980.2, Oct. 25, 2000, 2000 CPD ¶ 183 at 11; A Travel Passport, Inc.; Global Express Travel Servs., Inc., B-255383.2 et al., 94-1 CPD ¶ 171 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel