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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: TDF Corporation

File: B-288392; B-288392.2

Date: October 23, 2001

George Shreves for the protester.
Jeffrey I. Kessler, Esq., U.S. Army Materiel Command, Samuel J. Walker, Esq., and Bernadine F. McGuire, Esq., U.S. Army Operations Support Command, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where agency's evaluation record provides extensive analysis regarding protester's proposed staffing, and protester, after having been provided with the entire evaluation record, does not challenge the accuracy of the agency's calculations, agency reasonably evaluated protester's proposal as unacceptable on the basis of inadequate staffing.

2. Agency properly eliminated protester's proposal from consideration on the basis of its inadequate proposed staffing where solicitation specifically directed offerors to address the staffing of the various contract requirements, advised offerors that their proposed staffing approach would be a subject for evaluation, stated that a proposal which failed to provide a proposed approach that would successfully meet the contract requirements would be rated as "unacceptable," and provided that any such proposal would be eliminated from the competition.

3. GAO will not sustain protest on the basis of a potential conflict of interest, where protester fails to identify any meaningful flaw or inaccuracy in the agency's evaluation of its proposal and GAO's review of the evaluation record demonstrates that protester was not prejudiced by the potential conflict of interest.

DECISION

TDF Corporation protests the Department of the Army's determination that TDF's proposal to perform information technology (IT) base operation support services for Rock Island Arsenal (RIA) failed to meet the solicitation requirements. TDF protests

that the agency evaluation failed to properly apply the stated evaluation factors and that members of the agency evaluation team had a conflict of interest.

We deny the protest.

BACKGROUND

On August 25, 2000, pursuant to the provisions of Office of Management and Budget (OMB) Circular No. A-76, the agency issued solicitation No. DAAA09-00-R-5047 in order to select a private contractor to compete with the agency's most efficient organization (MEO) under the A-76 cost comparison process.[1]

Thereafter, TDF engaged in various communications with the agency, including an agency-level protest challenging various aspects of the solicitation. The agency responded to TDF's various concerns, including the protest, by issuing several solicitation amendments. As finally amended, the solicitation provided for selection of a private sector proposal based on the following evaluation factors: management approach, technical, small business use, past performance, financial capability and cost/price.[2] Offerors were advised that proposals would be evaluated on an

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[1] The procedures for determining whether the government should perform an activity in-house, or have the activity performed by a contractor are set forth in OMB Circular No. A-76, and the Circular No. A-76 Revised Supplemental Handbook (March 1996) (the "Supplemental Handbook"). The process set out in OMB Circular No. A-76 and the Supplemental Handbook broadly encompasses three steps. First, after the performance work statement (PWS) has been drafted, there is a competition among private-sector offerors, which is conducted much as any competed federal procurement is conducted. Second, if that competition is conducted on a basis other than selection of the low-cost-technically-acceptable proposal, the government's MEO, which has been prepared based on the PWS, is compared with the winning private-sector offer to assess whether or not the same level of performance and performance quality will be achieved—and if it will not, to make all changes necessary to meet the performance standards in the winning private-sector proposal. Supplemental Handbook, part I, ch. 3, §§ H.3.d, e. Finally, once the playing field is thus leveled, there is a cost comparison between the private-sector offer and the MEO. Id. This protest concerns step one.

[2] The solicitation identified various subfactors under each factor. For example, under the management approach factor, the solicitation listed the following: organizational structure; key personnel; management experience; and business strategies. Under the technical evaluation factor, the solicitation listed the following: system administration; customer service; customized software development and maintenance; e-mail services; and telecommunications. With identification of each subfactor, the solicitation provided a detailed description of the particular matters the agency would review.

"acceptable/unacceptable" basis with regard to the management approach, technical, and small business evaluation factors,[3] and that any proposal rated as "unacceptable" under any factor would be disqualified from the competition. RFP § M.1.2. Finally, the solicitation provided that past performance would be rated adjectivally, that cost/price and past performance were approximately equal in importance, and that the agency would perform a trade-off between cost/price and past performance with regard to proposals that were rated acceptable under the other evaluation factors.

TDF's proposal, which it submitted by the March 23, 2001 closing date, was the only one submitted by a private sector offeror. Thereafter, as required by the solicitation, TDF provided an oral presentation to the agency.[4] The agency then performed a preliminary evaluation of TDF's proposal and concluded that it contained numerous deficiencies. By letter dated April 24, the contracting officer advised TDF of the results of its evaluation stating:

> The Source Selection Board for this acquisition has completed their initial review of offers received and the results of that review indicate that your proposal, as submitted, contains serious inadequacies that need to be addressed. At this time, the government has decided to include your proposal in the competitive range of this competition. However, be advised that unless basic defects are resolved, your proposal may be removed from the competitive range and further consideration in this competition.
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> . . . . .
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> To begin the discussion process, a summary of these inadequacies is included as Enclosure 1. Your response to these basic deficiencies and weaknesses is essential for evaluation of your proposal to proceed. . . .

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[3] Section M of the RFP defined an "acceptable" rating as applicable to a proposal that: "demonstrates a clear understanding of requirements [and the] [e]vidence provided indicates that the stated approach will be successful and that solicitation requirements will be met." RFP § M.2.3. Conversely, the RFP defined an "unacceptable" proposal as one that "fail[s] to meet one or more of the criteria defined in the Acceptable rating above." Id.

[4] Section L.5.1 of the solicitation provided a detailed outline of the issues to be addressed during the oral presentation.

> . . . [O]ver-arching concerns of your proposal have been given. It does not address every instance of weakness or deficiency and is not all-inclusive. We recommend your response be based on a thorough review of your proposal against the RFP guidance and PWS requirements.

Agency Report, Tab 9, Letter from Contracting Officer to TDF (Apr. 24, 2001).

The agency's enclosure to the April 24 letter outlined various deficiencies in TDF's proposal, among other things, stating:

> Our review has resulted in serious concerns relative to your company's clear understanding of what is required to successfully accomplish an operation the size, scope and complexity of the PWS. Adherence to RFP Section L and consideration of Section M appear to be lacking. . . . Several critical functional areas lack sufficient information for evaluation. . . .
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> Also, adequate explanation was lacking for the areas of: staffing relative to identified workload, staffing distribution across shifts to accomplish 24-hour coverage, work hours or staffing for the 90-day transition period discussed in the Management proposal paragraph 2.1.2.8 and, staffing relative to the help desk.
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> . . . . .
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> As a result of your oral presentation we understand that you intend to use a matrixed workforce approach in supporting the PWS. However, your proposal did not address how you plan to manage this "fluid" workforce. What are your plans for overall management of workflow, training people who are shifted to different areas to accomplish work, completing the work those people would otherwise be performing, and clearly delineating supervisory lines of responsibility, authority and inter-communication?
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> . . . . .
>
> It is difficult to establish a clear association between the work requirements by PWS paragraph number and each position in each work unit, including the work years required for each function. Your proposal lists functional responsibilities (e.g., PWS sections 5.3.9.3.3.2, 5.3.4.3.4, 5.4.2.3.2) and multiple organizations. A clear crosswalk

> between your Staffing Matrix (starting page 87) and your Outline of all Paragraphs of the PWS (starting page 95) would assist our understanding of the proposal.

Agency Report, Tab 9, Enclosure 1, at 1-3.

On April 26, the agency conducted a meeting with TDF personnel to discuss the multiple proposal deficiencies. On May 11 and May 24, TDF submitted revisions and additions to its proposal. After reviewing TDF's supplemental submissions, the agency again evaluated TDF's proposal and again found it to be unacceptable in several areas. Among other things, the agency concluded that TDF's proposal failed to propose appropriate staffing levels to perform various contract requirements. The agency also concluded that TDF's technical approach merely restated various PWS requirements and failed to reflect an adequate understanding and/or experience regarding particular contract requirements, including operation and maintenance of the e-mail system, software maintenance, backup and recovery of the local area network (LAN), and telecommunications. In light of the multiple proposal deficiencies in TDF's proposed management and technical approach, the agency states that it could not make any final determination regarding the reasonableness of TDF's proposed cost/price.

On June 20, the agency's source selection evaluation board (SSEB) briefed the source source selection authority (SSA) regarding TDF's proposal. Based on the SSEB's input, the SSA determined that TDF's proposal would not be further considered. By letter dated June 27, the contracting officer notified TDF of this determination. This protest followed.

DISCUSSION

TDF protests that it was unreasonable for the agency to exclude its proposal from consideration, complaining that the agency failed to properly apply the stated evaluation factors and relied on factors not disclosed in the solicitation. We have reviewed the entire record and find no merit in TDF's allegations.

As noted above, the agency found various aspects of TDF's proposal to be unacceptable, including its proposed staffing levels. With regard to TDF's staffing, the agency's final evaluation report stated:

> Neither the written or oral presentation provides a clear description of what level of effort is intended below macro level PWS requirements. The staffing matrix [that TDF] provided does not allow for detailed analysis of specific PWS workload. . . . [T]he [technical and management evaluation] team spent considerable time attempting to determine which positions in the organization would perform specific portions of the PWS.

. . . . .

a. There are work hours allocated to PWS requirements that appear to be too low for accomplishment of the required work . . . .[5]

. . . . .

b. . . . A comparison of [TDF's] Staffing Matrix . . . and the PWS cross reference submitted by [TDF] revealed inconsistencies in the offer[or]'s proposal regarding assignment of requirements and allocated work years.

In all sections identified in the Staffing Matrix, there are work years allocated to a labor category, but there are no PWS requirements assigned for those positions . . . .[6]

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[5] The evaluation report then listed various examples of PWS requirements for which TDF's proposed staffing was insufficient. For example, PWS paragraphs 5.2.1 through 5.2.1.4 require providing support for the Rock Island Arsenal LAN, and contemplated 2,546 LAN work orders and 788 trouble tickets. These tasks have historically averaged approximately 1 hour each; yet TDF's proposed staffing level contemplated approximately 17 minutes per task. Similarly, the report noted that PWS paragraphs 5.2.2.7 through 5.2.2.9 require that telephone operator services be provided 24 hours a day, 7 days a week; yet TDF's proposal presents no plan for staffing the operator function as required. With regard to PWS paragraphs 5.3.2.3, which requires various LAN backup and recovery services, the report notes that TDF has allocated approximately 3 hours annually for each server, and that this effort is intended to include daily, weekly, and monthly backup, monitoring the backup jobs, and resolving operations problems. Finally, PWS paragraphs 5.3.3 through 5.3.3.2.5, requires operation of a help desk; the historic workload for this function includes 30,000 phone requests, 520 walk-in requests, and 5,200 e-mail requests. The report notes that TDF's allocated level of staffing would result in applying approximately 8 minutes per request and concluded that this was an insufficient amount of staffing time for this activity.

[6] The evaluation report then lists multiple examples, including: PWS paragraphs 5.1.4 through 5.1.4.3, Technology Research; PWS paragraphs 5.1.7 through 5.1.9, Computer Security; PWS paragraphs 5.2.1 through 5.2.1.4, Telecomunications Local Area Network Services; and PWS paragraphs 5.2.2 through 5.2.2.1.2.2, Telecommunications Switched Services. With identification of each PWS paragraph, the agency document describes certain associated concerns.

. . . . .

> Conversely, and of even more concern – there were instances in the offeror's proposal indicating assignment of PWS requirements to a labor category, but there were no work years allocated in the Staffing Matrix to execute the requirement . . . .[7]

Agency Report, Tab 20, Evaluation Report, 2-6.

Regarding TDF's proposed staffing, the report concludes: "[TDF's] proposal does not clearly demonstrate how the staffing levels will adequately perform the PWS workload. As a result, risk of failure is assessed as unacceptable." Id.

Ultimately, TDF received the complete evaluation report[8] and, thereafter, TDF submitted its final comments to our Office. Nothing in TDF's comments in any way refutes the factual accuracy of the agency's evaluation regarding TDF's proposed staffing. Indeed, rather than challenge the accuracy of the agency's staffing analysis, TDF asserts that it was not adequately advised that its proposal would be evaluated on the basis of its proposed staffing, complaining that "the solicitation did not state in Section M that the government would evaluate whether the contract staffing levels were appropriate for contract requirements." TDF's Final Comments, Oct. 11, 2001, attach 3, at 4. The record is to the contrary.

With regard to staffing, RFP § M explicitly advised offerors that both key personnel and non-key personnel would be evaluated, stating under the heading "Management Approach Criteria" as follows:

> All topics discussed as part of the oral presentation in [RFP] paragraph L.5.1(1)a5, Key Personnel, and a7, Staffing, and accompanying synopsis and forms are subject to evaluation. This factor includes the

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[7] The evaluation report followed this statement with specific examples of PWS requirements for which no time was allocated, including: the requirement in PWS paragraph 5 to assist in planning, organizing, and directing site information architecture; the requirements of PWS paragraph 1.3.1, concerning establishment of a quality control plan; the requirements of PWS paragraph 1.8.1, concerning contract data requirements; and the requirements of PWS paragraph 5.1.3, concerning maintenance of an automated database work order system.

[8] Following GAO's review of the initial agency report responding to the protest, GAO's requested that the agency provide TDF personnel with the entire evaluation record; the agency complied with GAO's request.

> qualifications and experience of key personnel . . . and the offeror's approach to filling non-key positions.

Agency Report, Tab 3, RFP § M.2.1(b).

The referenced portion of RFP § L above, which is incorporated into RFP § M.2.1(b), more specifically advised TDF that, in preparing its proposal, it must:

> Discuss the minimum qualifications for your non-key positions. Discuss how qualifications are determined before someone is hired. Discuss the numbers of people in each of the boxes of the organizational chart. Discuss how people are shared across the organization.

Agency Report, Tab 3, RFP § L.5.1(1)a7.[9]

In addition, as noted above, the agency advised TDF during discussions that its proposal was deficient regarding its proposed staffing, specifically advising TDF that it was difficult to correlate TDF's proposed staffing with the PWS requirements, and that TDF's proposal inadequately explained how it proposed to accomplish 24-hour coverage, how it proposed to staff for the 90-transition period, and how it proposed to staff the help desk.

It is a fundamental requirement that offerors be advised of the bases on which their proposals will be evaluated. Federal Acquisition Regulation (FAR) §§ 15.304(d), 15.305(a); Techsys Corp., B-278904.3, Apr. 13, 1998, 98-2 CPD ¶ 64 at 9. However, here, it is difficult to imagine how the agency could have more explicitly notified TDF that the protester must propose staffing adequate to perform the contract requirements, that the agency viewed a failure to do so as indicative of a lack of knowledge and understanding of the contract requirements, and that TDF's proposal would be eliminated from consideration if it failed to properly address the staffing requirements. TDF's protest that the agency's evaluation of staffing was somehow inconsistent with the RFP evaluation factors, and that the agency therefore unreasonably evaluated its proposal as unacceptable, is without merit.[10]

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[9] Section L of the RFP also directed TDF to prepare a staffing matrix which addressed each labor category proposed, and to provide a cross-refernce between its organizational chart and the various activities required by the PWS. RFP § L.5.1(1)a8.

[10] As noted above, the solicitation specifically advised offerors that a rating of unacceptable under any one of the evaluation factors would result in rejection of the proposal. Accordingly, TDF's deficient staffing provided ample basis to exclude its proposal from consideration, and we need not address the various other areas in which TDF's proposal was considered unacceptable. We note in passing that the

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Next, TDF protests that the agency's elimination of its proposal was improper due to an alleged conflict of interest on the part of two members of the nine-member evaluation team who held positions in the function under study. The agency responds that the positions held by the two evaluators at issue had previously been designated as "government in nature" and, therefore, these positions were not subject to being contracted out.[11]

We have held that, in conducting an A-76 procurement, the appointment of an evaluation panel where a large majority of evaluators hold positions in the function under study which are subject to being contracted out creates a conflict of interest that is inconsistent with the standards mandated by the FAR. DZS/Baker LLC; Morrison Knudsen Corp. B-281224 et al., Jan. 12, 1999, 99-1 CPD ¶ 19 at 7 (14 of 16 evaluators held positions that were subject to being contracted out). We have, however, also held that the appointment of evaluators who hold positions in the function under study is not necessarily improper if the positions are not directly affected, that is, are not in jeopardy of being contracted out. IT Facility Servs.-Joint Venture, B-285841, Oct. 17, 2000, 2000 CPD ¶ 177 at 12. Finally, even where a potential conflict of interest exists, we will not sustain a protest where the record demonstrates that there was no prejudice to the protester. See Battelle Memorial Inst., B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 6.

Here, our review of the agency's extensive evaluation record, including a review of the evaluators' individual worksheets, establishes that the agency's evaluation would not have been any different if the two evaluators at issue had not participated. As discussed above, the record amply supports the conclusion that TDF's proposal was unacceptable. Further, TDF was provided the entire evaluation record, relative to TDF's proposal, for its review. As discussed above, TDF did not identify any meaningful flaw or inaccuracy in the agency's calculations and analysis, and TDF's comments--which primarily focus on the assertion that TDF was not properly advised of the applicable evaluation factors--along with our own review of the evaluation record, support our conclusion that TDF was not prejudiced here by any

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proposal was evaluated as unacceptable under the technical evaluation factor with regard to e-mail services, software development/maintenance, system administration, and customer service.

[11] In reviewing this protest, we requested that the agency provide our Office with the documentation supporting its "government in nature" designation. The record shows that the two positions at issue were part of a routine assessment the agency performed in connection with its statutory obligations under the Commercial Activities program, and that there were several other positions, not at issue here, that were similarly designated as "government in nature" during that process.

potential conflict of interest that may have existed. Accordingly, on the basis of the specific facts presented here, we decline to sustain the protest.

The protest is denied.[12]

Anthony H. Gamboa
General Counsel

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[12] TDF raises various other issues. For example, it complains that the agency "prematurely" established the competitive range, improperly "blended" two types of evaluations, "improperly denied TDF's access to an expedited protest process," and "demonstrated bias against private sector offer[or]s on all A-76 cost comparison studies." TDF Final Comments, Oct. 11, 2001. We have reviewed each of these allegations and find no merit in them.