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Decision

Matter of: Alaskan Publications

File: B-283272

Date: October 27, 1999

Robert J. Dickson, Esq., Atkinson, Conway & Gagnon, Inc., for the protester.
Sharon A. Jenks, Esq., and Capt. Jennifer M. Bell-Towne, Department of the Air Force, for the agency.

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DIGEST

Protest of agency's evaluation of proposals and award to offeror that submitted the proposal rated higher technically in a no-cost procurement is denied where the evaluation was reasonable and consistent with the stated evaluation factors for award.

DECISION

Alaskan Publications protests the award of a contract to Anchorage Publishing under request for proposals (RFP) No. F65501-98-R-0068, issued by the Department of the Air Force for the publication of a weekly base newspaper at Elmendorf Air Force Base, Anchorage, Alaska. The protester challenges the agency's evaluation of the proposals.

We deny the protest.

The RFP, issued on May 11, 1999, sought proposals for the award of a contract to publish the base newspaper, Sourdough Sentinel, in accordance with stated agency procedures for obtaining commercial enterprise (CE) newspapers. See Air Force Instruction (AFI) 35-301 (Apr. 15, 1994); Department of Defense Instruction (DODI) 5120.4 (June 16, 1997). Under these procedures, the contractor is awarded the right to produce and distribute the newspaper, but must cover its costs and derive any profits from advertising revenues, so that the government does not expend

appropriated or nonappropriated funds.¹ The government, in return, retains the right to determine the editorial content of the publication. This exchange of rights constitutes the contract consideration. Biloxi-D'Iberville Press, B-243975.2, Sept. 27, 1991, 91-2 CPD ¶ 301 at 2.

The RFP contemplated the award of a contract for a base period with options to extend the contract for a total period not to exceed 6 years. RFP § 7(b). The solicitation provided a list of publication content requirements to be met by the publisher (id. § 1), and also set out general requirements regarding the role of the base's Public Affairs Office (PAO) in working with the publisher. Id. § 2. Next, the RFP provided general requirements to be met by the publisher in performance of the contract, regarding, for example, the use of only editorial material and photographs provided by the PAO (id. § 3(b)); the solicitation of all advertising (id. § 3(e)); the provision of full process color pages (id. § 3(g)) and color separation (id. § 3(h)); the provision of two Power Macintosh G-3 computers with specified software (id. § 3(k)); the production of photo reproduction of the highest quality found in local newspapers (id. § 3(n)); the use of standard, recyclable newsprint (id. § 3(q)); and the provision of a quality control plan to ensure all contract requirements are met. Id. § 3(v).

Offerors were advised that "award will be based on an [offeror's] ability to meet and/or exceed the government's minimum requirements." RFP app. 4, ¶ 1(f). Award was to be made to the responsible offeror whose proposal, responsive to the solicitation, was determined to be most advantageous to the government. RFP app. 4, ¶ 1(b). In accordance with DODI 5120.4 ¶ E4.1.10.8, cost was not a factor for award.

Appendix 4 of the RFP, at A-4-3 and A-4-4, listed the evaluation factors for award "in descending order of importance, with factors 1 and 2 of equal value and factors 3 and 4 of equal value." All subfactors were weighted equally. This evaluation provision also notified offerors that their proposals were to be "graded on their ability to meet and/or exceed the government's requirements. . . . [T]hose [proposals] that exceed the basic requirements will be scored accordingly." Id. ¶ 4, at A-4-3.

¹Since the publishing of CE newspapers does not involve the payment of appropriated funds, the Federal Acquisition Regulation generally does not apply. Our review in CE publication protests involves a review of the agency's actions to determine whether they were reasonable and consistent with any laws and regulations that may be applicable. The Winkler Co., B-252162, June 8, 1993, 93-1 CPD ¶ 444 at 5. In this regard, this procurement was conducted pursuant to DODI 5120.4 and AFI 35-301, which include provisions addressing the procurement of CE publishing services, including instructions for the factors to be used for evaluation of the proposals which were incorporated into the current RFP's evaluation scheme.

Evaluation factor 1, technical and production capability, included evaluation subfactors for the level and compatibility of automation, as well as printing capability, production equipment, physical plant capabilities, and distance to the plant. Id. ¶ 5, at A-4-3. Evaluation factor 2, services and/or items offered, included subfactors for the quality and amount of equipment and services offered, the usefulness of the services and/or items to the PAO in enhancing the newspaper, and their impact on other parts of the newspaper. Id. at A-4-4. The RFP also provided the following notice regarding evaluation of proposals under factor 2: “[an] offer of equipment or services not specifically related to producing the publication will not result in the assignment of a higher score.” Id. Evaluation factor 3, past performance record, included subfactors relating to the offeror’s ability to successfully produce a CE or similar publication, printing ability, timely and responsive prior contract performance, and demonstrated capability to sell advertising to recoup publication costs. Id. Evaluation factor 4, management approach, included subfactors related to the offeror’s interface with the PAO, control over the quality and timeliness of the finished product, sale of advertisements enhancing the publication’s image, and the supervision and management of the contractor personnel. Id.

Appendix 3 of the RFP, containing instructions to the offerors, emphasized that proposals would be evaluated for soundness of approach, compliance with requirements, and understanding of the requirement under each evaluation factor. Offerors were notified that proposals were to describe in sufficient detail the proposed approaches and methods of accomplishing the required tasks. RFP app. 3, ¶ 9, at A-4-3. Appendix 3 also notified offerors of the general type of information to be included in their proposals for evaluation under the evaluation factors and subfactors. For example, offerors were instructed to describe in their proposals their printing capability in terms of color, quality of photo reproduction and quality of paper (id. at A-3-4), the quality, usefulness, and amount of services and/or items offered that would greatly enhance the publication (id.), and the firm’s quality control methods for ensuring the quality and timeliness of the finished product (id. at A-3-6).

A numerical/adjectival rating system was provided in the RFP to reflect the evaluators’ assessments of the proposals under each evaluation factor in terms of quality, quantity, and usefulness. Under the stated evaluation scheme, higher scores were to be assigned to proposals that were found to excel in required areas.²

²Under the RFP’s rating system, for instance, a rating of “outstanding” (worth 5 points) reflects an evaluation finding that the proposal “[e]xcel[s] in the specified performance or capability in a beneficial way to the Air Force and has no weakness.” A rating of “excellent” (worth 4 points) reflects a finding that the proposal “[e]xceed[s] in the specified performance or capability in a beneficial way to the Air Force and has no significant weakness.” A rating of “acceptable” (worth 3 points) reflects a

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Alaskan, the incumbent publisher of the newspaper, and Anchorage submitted the two proposals received by the scheduled June 1 closing time. The proposals were evaluated, and strengths and weaknesses in the proposals were noted by the evaluators. Although both Alaskan's and Anchorage's proposals were highly rated, Anchorage's proposal was rated higher overall, with a higher total numerical score, based on the additional strengths found in its proposal. Specifically, each of the offerors' proposals was rated excellent under both the technical and production capability factor and the services and/or items offered factor; however, as discussed more fully below, Anchorage's proposal was found to offer additional strengths under both factors. Alaskan's proposal was rated outstanding for past performance, while Anchorage's proposal was rated excellent. Under the management approach factor, the protester's proposal was downgraded under the quality control subfactor for its failure to provide sufficient detail in its quality control plan submission as to its proposed approaches and methods of ensuring accuracy and timely completion of tasks; consequently, the Alaskan proposal received a rating of acceptable under the management factor. Anchorage's proposal, which was found to provide a strong organizational framework and detailed quality control plan, was rated excellent under the management approach factor. Source Selection Evaluation Team (SSET) Memorandum, June 21, 1999, at 3-7.

The SSET determined that the Anchorage proposal offered the best overall value to satisfy the agency's needs. Id. at 6. In particular, the SSET noted the following:

[The Anchorage proposal] surpassed [the Alaskan proposal] in all areas except for past performance, although we are confident they can, and will, perform the duties associated with printing a quality [CE] newspaper. . . . Anchorage . . . provided a superior proposal, offering [deleted]. Customers speak very highly of their performance with regards to timely, accurate and quality work. They [deleted] and have a sound management plan, as well as [deleted].

Id. at 6-7. The source selection authority, citing the Anchorage proposal's strengths, as noted by the SSET, selected Anchorage for award, and the contract was awarded

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finding that the proposal “[m]eets evaluation standards and any weaknesses are readily correct[able].” A rating of “marginal” (worth 2 points) reflects a finding that the proposal “[f]ails to meet evaluation standards; however, any significant deficiencies are correctable.” Ratings of “poor” (worth 1 point) and “unacceptable” (worth 0 points) were also listed. RFP app. 4, at A-4-2.

on July 14. Alaskan filed its protest with our Office after a debriefing with the agency.

Alaskan protests the evaluation of proposals as unreasonable and inconsistent with the stated evaluation factors for award.³ In reviewing a protest challenging an agency's technical evaluation of proposals, we examine the record only to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria, since the determination of the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. See Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3. As discussed below, we have examined the agency's evaluation record, as well as the offerors' proposals, and conclude that the evaluation and award determination were reasonable and consistent with the stated evaluation criteria.

Alaskan principally contends that the evaluators used unstated evaluation factors in assessing the noted strengths in the Anchorage proposal. The protester bases its contention on DODI 5120.4 and AFI 35-301, which provide that the evaluation of proposals for CE publications is to be limited to those items listed in the RFP's evaluation criteria. In particular, Alaskan contends that the agency should not have considered Anchorage's offer of equipment or services in excess of the RFP's generally stated requirements as the basis to distinguish the evaluated strengths of the proposals.

The RFP here expressly put offerors on notice that qualitative differences in the proposals exceeding generally stated requirements would warrant higher evaluation ratings.⁴ RFP app. 4, at A-4-2 and A-4-3. Contrary to Alaskan's argument, in making

³Several other aspects of Alaskan's protest are untimely and will not be considered further. Alaskan contends that the RFP is deficient since, according to Alaskan: the RFP failed to provide definitive agency minimum requirements; the RFP's evaluation factors failed to specify the type of equipment or services that, if proposed, would warrant a higher rating; the RFP failed to state the specific information that the agency deemed necessary for a higher evaluation rating for the required quality control plan; and the RFP failed to adequately set out the relative weight assigned to the evaluation factors. These post-award protest contentions are untimely filed, since, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1999), a bid protest which is based upon alleged improprieties apparent from a solicitation, must be filed prior to the closing time for the receipt of proposals. Teleport Communications Group, B-277926.2, Sept. 17, 1998, 98-2 CPD ¶ 72 at 6 n.6; Imagineering Sys. Corp., B-228434.2, Feb. 4, 1988, 88-1 CPD ¶ 109 at 2.

⁴To the extent the protester asserts that the DODI and AFI prohibit this type of qualitative ranking of proposals for technical merit, crediting a proposal offering items or services beyond those necessary to meet stated minimum requirements, the
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such comparative judgments about the relative merits of competing proposals, agencies may take into account specific matters that are logically related to or encompassed by the evaluation factors, even though the RFP did not list them as specific subfactors. See TESCO, B-271756, June 24, 1996, 96-1 CPD ¶ 284 at 2. Our review of the record here, as discussed below, shows a reasonable relationship between the strengths noted in the proposals and the RFP's requirements, and a reasonable basis for the agency's rating Anchorage's proposal higher overall than Alaskan's.

In rating the Anchorage proposal excellent for technical and production capability, the agency noted specific strengths in that proposal, which were not found in the protester's proposal, related to Anchorage's offer of [deleted], and the ability of the firm [deleted]. SSET Memorandum, supra, at 3-4. These strengths are reasonably related to the RFP's stated publisher requirements, regarding newsprint (RFP § 3(q)), and color capability (id. at § 3(g) and (h)), and are appropriate for consideration under the RFP's evaluation scheme, which notified offerors that their proposals were to include information regarding the quality of paper and variety of color proposed, RFP app. 3, at A-3-4, factor 1(c), and provided for a qualitative rating of printing and production capabilities. See RFP app. 4, at A-4-2 through A-4-3. The record shows that although Alaskan's proposal was credited for strengths in providing [deleted] (which, we note, were not specifically required by the RFP, and were, in any event, similarly offered in the awardee's proposal) and [deleted], the awardee's proposal offered the additional strengths noted above, and under the RFP's evaluation scheme, was evaluated accordingly. See SSET Memorandum, supra, at 4. The record therefore provides no reason to question this aspect of the evaluation.

Under the services and/or items offered factor, the Anchorage proposal was considered superior to the Alaskan proposal for strengths related to its offer of a [deleted] for use by the PAO (which, the agency concluded, would enhance automated publication of the newspaper since [deleted]). The evaluators also noted the awardee's demonstrated commitment to further improvement of the paper through its proposal for [deleted]. Id. These cited strengths (regarding the [deleted]) are reasonably related to RFP requirements regarding, respectively: the use of PAO-furnished photographs and photo reproduction (RFP § 3(b), and (n)); quality of computer equipment (id. § 3(k)); and advertisement solicitation. Id. § 3(e). These cited strengths, along with the support services proposed, which were also noted as strengths in the Anchorage proposal, also reasonably relate to the RFP's general requirements for the publisher to work closely with the PAO, ensuring compatibility

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challenge is untimely, since alleged improprieties in a solicitation must be protested prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

with PAO equipment, and to uphold the image of the publication. *Id.*, app. 3, at A-3-5, factor 4. Accordingly, we conclude that the agency reasonably credited the proposal for these strengths as logically encompassed by the services and/or items offered factor, which explicitly provided subfactors for the quality and amount of equipment and services offered. *Id.* at A-3-4, factor 2. See *Winkler Co.*, *supra*, at 10.

Although Alaskan's proposal was credited under the services and/or items offered factor for its strengths in offering the [deleted], the protester has not shown that the agency acted without a reasonable basis in determining that, overall, the Anchorage proposal offered additional strengths under this evaluation factor. The agency points out, for instance, that the benefits of [deleted] were attractive and noted as a strength in the Alaskan proposal, but comparatively, the substantial anticipated benefits of the awardee's [deleted] included: [deleted].⁵ SSET Memorandum, *supra*, at 4; Supplemental Agency Report, Sept. 9, 1999, at 1, and attach 1 ¶ 1. Since the evaluation was reasonably based, we see no reason to question the evaluation of the proposals under this factor.

With respect to the two remaining evaluation factors, although Alaskan's proposal was rated higher than Anchorage's proposal for past performance, Alaskan's proposal was rated lower under the equally weighted factor for management approach. The protester's proposal was downgraded for failure to provide, as required, a detailed quality control plan demonstrating the proposed methods and approaches to ensure successful performance of contract requirements. The agency evaluators found that, although Alaskan stated its prior successes in performing similar projects, and stated its emphasis on maintaining communication with the PAO (for example, [deleted]), the firm "failed to spell out how they would ensure quality control. No specific plan was provided, only general statements regarding success." SSET Memorandum, *supra*, at 6.

The Anchorage proposal, on the other hand, which provided a comprehensive description of its organizational framework and management plan, included a detailed quality control plan setting out its editing and review systems and its intent to work closely with its staff and the PAO through [deleted]. We think the agency's higher level of confidence in the awardee's more detailed management proposal in this regard, as reflected in the evaluation and source selection record, is reasonably

⁵We note that, although Alaskan alleges that the strengths cited in the Anchorage proposal reflect the use of undisclosed evaluation criteria, its argument is undercut by its failure to question the high ratings assigned to its proposal for offering services not specifically listed in, but similarly reasonably related to, the stated evaluation criteria (e.g., although the RFP did not provide them as specific evaluation factors, Alaskan's proposal was rated highly for its offer of a [deleted], related only to the RFP's general instructions, at appendix 3, referencing photographic services, and for its proposed training.

based. The higher evaluation rating assigned to it is in accordance with the RFP's evaluation scheme. The RFP required a detailed submission of the offeror's proposed methods and approaches to performance (RFP app. 3, ¶ 9), and specifically required a quality control plan to ensure that all contract requirements are met. It is an offeror's obligation to submit an adequately written proposal. See Educational Computer Corp., B-227285.3, Sept. 18, 1987, 87-2 CPD ¶ 274 at 3-4. Alaskan, in an exercise of its own business judgment, failed to provide much detail in its quality control "plan" submission to demonstrate how it proposed to ensure accurate and timely performance of the contract; the proposal was reasonably downgraded for this reason. Consequently, we have no basis to question the propriety of the agency's evaluation of the proposals for award, or its selection of Anchorage's higher rated proposal.⁶

The protest is denied.

Comptroller General
of the United States

⁶Alaskan also contends that it recently learned that a former employee of a company that was purchased by Alaskan had heard from a business associate, prior to award, that Anchorage's publisher had said that Anchorage was going to receive the award. Affidavits submitted by Alaskan's source and the business associate, however, do not reasonably support the protester's bald allegation of improper influence in the award of the contract. In light of the lack of evidence to support the allegation, and since the record fully supports the reasonableness of the award determination, we have no basis to review the allegation further. In its comments to the agency's report, Alaskan also raised, for the first time, a challenge to the agency's failure to conduct a site survey during the procurement. This contention, which the protester could have pursued at the time of its initial protest, is untimely filed and, therefore, not for our review. 4 C.F.R. § 21.2(a)(2).