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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Starlight Corporation

File: B-291520

Date: January 3, 2003

Rick Hall for the protester.

Denise A. McLane, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency unreasonably rejected proposal as technically unacceptable is denied where agency reasonably understood the protester's proposal as failing to provide the staffing that the solicitation specified as required for particular services under the statement of work.

DECISION

Starlight Corporation protests the award of a contract to Empire Aircraft Service under request for proposals (RFP) No. F28609-02-R-0014, issued by the Department of the Air Force for aircraft wash services at McGuire Air Force Base. Starlight contends that the Air Force improperly rejected its proposal as technically unacceptable.

We deny the protest.

The solicitation, issued on March 30, 2002, for aircraft wash services management functions, aircraft wash and lubrication services, and emergency services, provided for award to the responsible small business offeror whose conforming proposal was most advantageous to the government. The solicitation stated that the lowest-priced technical proposals would be evaluated on a pass/fail basis for five specified factors; and further provided that the contracting officer would request performance information on the lowest-priced technically acceptable proposals in order to assess the offerors' ability to perform the effort described in the RFP. In the award decision, past performance history was to be significantly more important than price. The solicitation also provided that the government intended to award a contract without conducting discussions.

Nine proposals were received from seven offerors by the May 17, 2002 closing date. As a result of the evaluation of the technical proposals, Starlight's proposal received a rating of "fail." While the evaluators found Starlight's proposal to be very well prepared with an excellent staffing plan and detailed list of equipment, Starlight's proposed staffing for certain towing operations failed to comply with the statement of work (SOW) and technical data, which the agency determined made it impossible to rate Starlight's overall proposal as passing. Agency Report (AR), Tab 9, Technical Evaluation Summary, at 2. Specifically, the solicitation provided that with respect to wash rack tow of the C-141/ C-17/ KC-135 aircraft as follows:

Note: IAW applicable technical data all C-141, C-17 and KC-135 towing operations into and out of hangar facilities require 7 personnel.

RFP § A1.2b.

In its proposal in response to § A1.2b, Starlight stated:

The contract manager will assign 6 personnel to serve as observation walkers while towing aircraft to or from the wash rack facilities. Each person assigned will have qualifications documented that ensures he or she has attended the proper training classes for this operation and is full[y] knowledgeable of the [Logistics Group Operating Instruction (LGOI)] 2-129 and the LGOI 21-201. Each personnel will wear reflective vest clothing and will have a whistle and flashlight for nighttime activities. Wash personnel will remain vigilant of the aircrafts position to other aircraft, structures, or obstacles that may impact the aircraft during this towing segment. The contract manager will ensure that the driver of the tow vehicle is licensed and certified to operate the support equipment.

AR, Tab 4, Starlight's Proposal at 8.

The agency found that Starlight's proposal directly conflicted with the specific solicitation requirement that seven personnel were required for towing C-141/C-17/KC-135 aircraft into and out of hangars.

Three proposals, including Empire's, were considered technical acceptable. Although Empire did not submit the lowest price of the three technically acceptable proposals, the agency determined that Empire's exceptional past performance rating outweighed the price difference, and award was made to Empire.

After receiving a debriefing, Starlight filed this protest, contending that it met all the requirements of the SOW. After the protest was filed, the Air Force determined that, based on the urgent and compelling need for the services, continued performance of the contract was in the best interest of the government.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id. The offeror has the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. PEMCO World Air Servs., B-284240.3, et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 15. Here, the record establishes that the Air Force reasonably evaluated Starlight's proposal as technically unacceptable with respect to its proposed staffing for C-141/C-17/KC-135 towing operations.

As explained above, the solicitation specifically stated that C-141, C-17 and KC-135 towing operations require seven personnel. The protester maintains it met this requirement in its proposal by stating that there would be six walking observers and an A&P mechanic supervisor driving the tow vehicle for a total of seven. However, as quoted above, the protester merely stated that it would assign six personnel to serve as observation walkers while towing aircraft to or from the wash rack facilities and went on to indicate that the tow vehicle driver would have the appropriate credentials. The protester's proposal did not specifically state that it proposed a tow vehicle driver in addition to the six observation walkers. The protester argues that the agency should have understood Starlight's statement that the contract manager would ensure that the tow vehicle driver is licensed and certified to operate the equipment as indicating that the tow vehicle driver would be in addition to the six other personnel, for a total of the seven required by the solicitation.

However, as the agency has pointed out, there is no express language in the protester's proposal stating that Starlight's proposed tow vehicle driver was in addition to the six observation walkers. Consequently, the evaluators had no way of knowing whether Starlight's proposed six observation walkers included the tow vehicle driver. In this regard, with respect to a similar requirement for wash rack towing of KC-10 aircraft (RFP § A1.2(a)), which called for a total of only six personnel, rather than seven personnel, the protester offered six observation walkers and also stated the vehicle driver would be licensed. This response could reasonably have suggested to the agency that the protester was offering a total of six personnel in both circumstances, with one of the proposed walkers also serving as a driver. In our view, Starlight's proposal was ambiguous at best, and it was not unreasonable for the agency to conclude that Starlight proposed only six personnel to perform this operation, in conflict with the solicitation requirement. In this regard, in its response to the agency after the debriefing, Starlight itself conceded that it failed to propose the required number of personnel, a concession the protester

now contends was misplaced and offered as part of an “emotional response to the disappointment of not being awarded a contract.” Protester’s Comments at 1. Regardless of Starlight’s current position on its earlier concession, we do not find the agency’s evaluation unreasonable, as explained above.¹

The protest is denied.

Anthony H. Gamboa
General Counsel

¹ The protester also expresses concerns about this award to Empire because award was also made to Empire for certain transient alert services at McGuire by the same contracting office. To the extent the protester speculates that the agency’s evaluation was biased in favor of Empire, the record provides no basis to support the speculation. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6.