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

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Decision

Matter of: Eagle Aviation Services and Technology, Inc.

File: B-403341

Date: October 14, 2010

Wayne A. Keup, Esq., for the protester.

Sharon A. Jenks, Esq., Department of the Air Force, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency should have given protester the opportunity to show that material information required to be included in one volume of the proposal was included in a different volume is denied where solicitation provided that only information included in designated volume would be considered in evaluating proposals.

DECISION

Eagle Aviation Services and Technology, Inc., of Reston, Virginia, protests the rejection of its proposal under request for proposals (RFP) No. FA4664-10-R-0005, issued by the Department of the Air Force for base operating services at March Air Reserve Base (ARB), California. The protester contends that the contracting officer abused his discretion in failing to give it the opportunity to address an informational deficiency in its proposal pertaining to its experience.

We deny the protest.

The RFP, which is set aside for small business competition, contemplates the award of a single contract for the management and operation of multiple base operating services at March ARB. Among the services to be furnished are transient aircraft maintenance and airfield management.¹ The solicitation provides for a multiple-step evaluation process; under the first step, offeror compliance with two “minimum

¹ Other services are base supply, motor vehicle management, traffic management, real property maintenance, and fuels management.

qualification requirements” pertaining to experience is to be evaluated on a go/no-go basis.² To establish compliance with the minimum qualification requirements, the RFP instructed offerors to identify and furnish detailed information regarding previously-performed contracts for similar services, including annual and total dollar values of the pertinent functions managed and/or performed, performance period, and number of employees.

The RFP instructed offerors that their proposals were to be submitted in four volumes: administrative/contract documentation, technical capabilities, present/past performance, and cost/price. Information establishing compliance with the minimum qualification requirements was to be included in volume I (administrative/contract documentation). RFP § L-1, Table 1. The RFP advised that “[e]ach volume shall be written on a ‘stand-alone’ basis so that its contents may be evaluated without cross-referencing to other volumes of the proposal.” RFP § L-1(e)(1). Along the same lines, the RFP admonished offerors that information required for proposal evaluation not found in the designated volume would be regarded as omitted. RFP § L-1(e)(3).

The protester submitted a timely proposal in response to the RFP; the proposal comprised four volumes. Volume I included a tab marked “Minimum Qualifications,” which consisted of a single page. The page described a contract that the protester had performed at Willow Grove Air Reserve Station, under which Eagle had provided real property maintenance and services, supply, traffic management, vehicle operations and maintenance, and fuels management. No information was provided regarding the performance of transient aircraft maintenance or airfield management services.

By letter dated July 14, 2010, the contracting officer notified Eagle that its proposal had been rejected for failing to demonstrate experience in the areas of transient aircraft maintenance and airfield management.³ The protester immediately

² The minimum qualification requirements are that (1) the prime have at least 1 year of experience within the last 5 years managing and performing a single, or simultaneously performing multiple, base operating services (or equivalent commercial) contract(s) encompassing at least two services similar in size and scope to the services to be provided here, and (2) the offeror’s team, as a whole, have experience within the last 5 years in providing services similar in size and scope to each of the services to be provided here. RFP § M-1(1). The RFP stated that “[a]n offeror that does not meet the minimum qualification requirements will be eliminated from the competition.” RFP § M-1(2).

³ The contracting officer also noted that Eagle had failed to demonstrate relevant experience in fuels management. The contracting officer subsequently conceded that this was an error and that the protester had addressed fuels management in its minimum qualifications submission.

contacted the contracting officer and asked him to reconsider his decision. Eagle explained that it had inadvertently omitted four pages addressing its minimum qualifications from volume I of its proposal, but that it had furnished a complete description of its experience in volume III. Eagle also noted that its proposal cover letter, which was included in volume I, described experience on the part of the protester and its subcontractor in performing all of the required services. The protester asserted that the contracting officer was required to “obtain clarification of the perceived omissions,” Protest, Exh. 2; according to Eagle, such an exchange would have disclosed that the omissions were a clerical error, which could have been corrected through reference to volume III. By letter dated July 16, the contracting officer rejected the protester’s argument and refused to reinstate Eagle’s proposal in the competition. On July 19, Eagle protested to our Office.

Eagle argues that the contracting officer abused his discretion in failing to give it the opportunity to show that information establishing its compliance with the minimum qualifications requirement was present in the cover letter and volume III of its proposal. In the alternative, Eagle argues that the contracting officer’s rejection of its proposal as noncompliant was essentially a determination of nonresponsibility, which, because the protester is a small business, should have been referred to the Small Business Administration (SBA) for consideration under Certificate of Competency (COC) procedures.

Eagle did note in the cover letter of its proposal that its proposed subcontractor was furnishing airfield management services at both a specified air reserve station and a specified Air Force base, and that it had experience in furnishing “transient alert” services at another specified Air Force base. Eagle did not, however, furnish in the cover letter the detailed information required by the RFP to establish experience in performing services similar in scope and magnitude to those to be provided here. For example, the cover letter did not provide information regarding the dollar value of the services that the protester’s subcontractor was performing at the other bases and stations or the number of employees working on them. The cover letter also failed to provide information regarding the time period during which the subcontractor had performed the transient alert services (and thus did not establish performance within the last 5 years). In sum, the general information furnished by the protester in its cover letter was clearly insufficient to demonstrate compliance with the RFP’s minimum qualification requirements.

The protester also argues that the agency should have given it the opportunity to show that volume III of its proposal contained information establishing its compliance with the minimum qualification requirements. We disagree. The RFP here explicitly advised offerors that only information included in the designated volume would be considered in evaluating proposals. Moreover, there was nothing in volume I of the protester’s proposal—which, under the RFP, was the only volume that was to be considered in determining the protester’s compliance with the minimum qualification requirements—that would have placed the agency on notice

that the protester had inadvertently omitted pages addressing its experience from the volume.⁴ As a result, there was no reasonable basis for the contracting officer to regard the protester's failure to furnish the required information as other than a material omission not subject to correction except through discussions, which the agency had no obligation to conduct with Eagle.⁵ See RFP § M-2(b)(7) (agency reserves right to make award without holding discussions); Gemmo-CCC, B-297447.2, July 13, 2006, 2006 CPD ¶ 182 at 5.

We also find no merit in the protester's argument that the contracting officer's rejection of its proposal for failure to demonstrate experience in performing airfield management and transient aircraft maintenance was essentially a determination of nonresponsibility, requiring referral to the SBA under COC procedures. Where an agency finds a proposal to be unacceptable based on the offeror's failure to submit required information establishing its experience, the finding does not constitute a

⁴ The protester's suggestion that the contracting officer in fact knew that the missing information was contained elsewhere in the proposal, Comments, Aug. 30, 2010, at 3, is clearly without merit. The protester asserts that its cover letter showed that it met the minimum qualification requirements and the contracting officer thus knew that additional relevant information "would necessarily be included in a properly prepared Volume III." Id. As explained above, the cover letter did not demonstrate that the protester met the qualification requirements. Faced with a Volume I that lacked the information specifically required by the RFP, there was no reason for the contracting officer to "know"--actually or constructively--that the missing information was contained elsewhere in the proposal.

⁵ The protester cites two cases in support of its assertion that we will sustain a protest where the agency does not make efforts to bring step one proposals to an acceptable status. Comments, supra at 4-5. Both cases--Angstrom, Inc., B-193261, July 9, 1980, 80-2 CPD ¶ 20 and Control Central Corp.; American Tech. Servs., Inc., B-214466.2, B-214466.3, July 9, 1984, 84-2 CPD ¶ 28--involved two-step sealed bidding under FAR subpart 14.5, which differs materially from the procedure established under the RFP here. As explained in Angstrom, two-step sealed bidding contemplates qualification of as many proposals as possible through discussions and does not require compliance with "all details of the specifications." Angstrom, Inc., supra at 6; see FAR § 14.503-1(e)(2) (conformance required with the "essential requirements or specifications" in the solicitation). In contrast, the RFP here clearly described how information was to be presented in the proposals and required demonstration of compliance with the minimum qualifications in order for proposals to be considered acceptable, and the protester indisputably omitted the required information from Volume I of its proposal.

determination that the offeror is not a responsible prospective contractor.
Menendez-Donnell & Assocs., B-286599, Jan. 16, 2001, 2001 CPD ¶ 15 at 3 n.1.

The protest is denied.

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Acting General Counsel