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**Comptroller General  
of the United States**

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

## **Decision**

**Matter of:** Birdstrike Control Program

**File:** B-403967.2

**Date:** August 3, 2011

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Nicholas B. Carter, Esq., for the protester.

James H. Roberts III, Esq., Van Scoyoc Kelly & Roberts, for Phoenix Bird Control Services, an intervenor.

Michael G. McCormack, Esq., Department of the Air Force, for the agency.

Frank Maguire, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest is denied where agency found protester's quotation technically unacceptable for failure to address explicit solicitation requirement for information regarding use of hazardous materials and GAO review confirms that protester's quotation did not include the required information.

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### **DECISION**

Birdstrike Control Program (BCP), of Willis, Texas, protests the issuance of a purchase order to Phoenix Bird Control Services (PBCS), of Suffolk, England, by the Department of the Air Force under request for quotations (RFQ) No. FA5587-10-T-0009 for wildlife control services at RAF (Royal Air Force) Lakenheath and RAF Mildenhall, United Kingdom (UK). BCP asserts that the agency miscalculated its quotation.

We deny the protest.

### **BACKGROUND**

The RFQ was issued on August 11, 2010, for wildlife control services for Air Force units operating airfields at RAF Lakenheath and RAF Mildenhall, UK. Contracting Officer's (CO) Statement, at 2. Award was to be made on a lowest-priced, technically acceptable basis. RFQ at 15. With regard to the technical evaluation of quotations, the RFQ provided that the evaluators would assign ratings of acceptable or unacceptable with regard to six subfactors: (1) transition plan, (2) mission support

plan, (3) qualification, (4) management procedures, (5) past experience, and (6) training. RFQ at 15-16. The RFQ further provided that if a quotation received a rating of unacceptable with regard to any one subfactor, the entire quotation would be rated unacceptable. Id. at 15.

The RFQ included quotation preparation instructions that advised, as is pertinent here, that firms were required to include a list of all hazardous materials to be used during contract performance. Id. With regard to technical acceptability, the RFQ provided that missing required documentation could form the basis for the assignment of an unacceptable rating. RFQ at 15. Pertinent here, with regard to evaluation of technical subfactor 2, mission support plan, the RFQ provided that quotations had to be comprehensive and complete and that:

To be acceptable your quotation must fully address your comprehensive FOD [foreign object damage] control plan, Equipment/Facility management, Birdstrike response and training, HAZMAT materials and management of resources.

Id. at 16.

Three quotations were received by the due date of February 18, 2011, including quotations from BCP and PBCS. CO's Statement at 8. The technical evaluation team (TET) found BCP technically unacceptable with regard to four evaluation subfactors: mission support team, qualification, management procedures, and training. Agency Report (AR), Tab 8, TET Report, at 1. Award was made to PBCS on April 15, 2011. CO's Statement at 9. After being advised of the agency's award decision and receiving a debriefing, BCP filed this protest.

## ANALYSIS

BCP challenges the TET's finding of unacceptability with regard to each of the four technical evaluation subfactors identified in the TET Report. We note at the outset that, in reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. Mere disagreement with the agency's evaluation is not sufficient to call it into question. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As noted, the RFQ advised that an unacceptable rating under any one of the technical evaluation subfactors would result in the quotation being found unacceptable overall. Since, as discussed below, we find the agency's evaluation of BCP's quotation under the mission support plan subfactor reasonable, we confine our discussion to that area of the agency's evaluation. B&S Transp., Inc., B-402695, July 9, 2010, 2010 CPD ¶ 161 at 7 n. 2.

The record shows that BCP was found technically unacceptable under the mission support plan subfactor for failing to discuss the firm's handling of HAZMAT materials. According to the protester, this finding was unreasonable because it indicated in its quotation that it did not intend to use HAZMAT materials in performing the contract, and, therefore, it was not required to include information in its quotation relating to HAZMAT materials.

We find no merit to the protester's assertion. The record shows that the agency found inconsistencies in BCP's quotation that gave rise to a concern that the firm had failed to meet the RFQ requirement for information relating to its potential use of HAZMAT materials. On the one hand, BCP's quotation represented that it did not intend to use HAZMAT materials in performing the contract, and therefore it included no information relating to HAZMAT materials. AR, Tab 5, at 4. However, elsewhere in its quotation, BCP represented that:

Upon encountering wildlife, the wildlife control unit will notify the Control Tower and Airfield Ops if necessary and then use birds of prey, dogs, distress calls, pyrotechnics, radio-controlled craft, or any suitable method to rid the threat from the airfield.

\* \* \* \* \*

BCP utilizes all forms of wildlife control, as determined by the species and environment, in order to mitigate the risk of bird strike. BCP is familiar with and utilizes all forms of wildlife active and passive management techniques . . . including but not limited to: bird scaring cartridges, distress calls, birds of prey, dogs, repellants, scare devices, mimics, model aircraft/boats, trapping and lethal control, and passive techniques, in particular habitat management.

AR, Tab 5, at 9-10.

The record shows that the agency evaluators were concerned because, although BCP had represented that it would not use HAZMAT materials, some of the techniques identified in its quotation clearly called for the use of such materials. The evaluators found:

The contractor stated on page 4 of their technical approach that they will not utilize any hazardous material in the performance of this contract. However, on page 7 paragraph 3 and 4 of the technical approach the contractor stated they will utilize pyrotechnics, scarring [sic] cartridges [and] repellants which are hazardous materials. The contractor's technical approach failed to address these hazardous materials.

TET Report at 1. The record thus shows that, because of this inconsistency in its quotation, the evaluators rated BCP's quotation unacceptable under the mission support plan subfactor.

BCP asserts that the language in its quotation relied on by the TET concerning the methods BCP would employ did not indicate that BCP would actually use those methods, but rather was merely an indication that BCP was familiar with these methods. BCP argues that, especially in view of its explicit disclaimer regarding the use of hazardous materials, the TET was unreasonable in concluding that BCP would actually be using these items in the performance of the contract.

We find no merit to the protester's position. The quotation was unequivocal in representing that BCP "is familiar with and utilizes all forms of wildlife active and passive management techniques . . ." AR, Tab 5, at 9. The plain meaning of this language, as reasonably understood by the evaluators, is that BCP intended to utilize the techniques listed, including those that the evaluators found would involve HAZMAT materials. We therefore conclude that the agency's evaluators acted reasonably in finding that BCP's quotation was unacceptable for failing to include information relating to its handling of HAZMAT material in light of the plain language of the firm's quotation. Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 10 (it is a vendor's responsibility to submit an adequately written quotation that clearly demonstrates compliance with the solicitation requirements).

BCP further asserts that the particular methods cited by the TET--pyrotechnics, scaring cartridges, and repellants--do not involve use of hazardous materials. BCP relies on Air Force guidelines, including AFI 32-7086, Hazardous Materials Management, listed in the RFQ, which provide that the definition of hazardous materials does not include munitions or hazardous waste.

The agency, however, points out that the definition of hazardous materials in AFI 32-7086 is not controlling because the RFQ provided that, if compliance with the Air Force guidance conflicts with compliance with country-specific governing standards, the RFQ required compliance with the country-specific provisions. The agency notes that Clause 1.28.1 of the performance work statement (PWS), "Control and Handling of Hazardous Materials," makes the contractor responsible for compliance with the UK Health and Safety at Work Act of 1974 and the UK Environmental Protection Act of 1990. The agency further states that the members of the TET are very familiar with the hazardous material statutes and regulations in the UK, and that they advise that materials such as pyrotechnics and scaring cartridges are considered hazardous materials under those requirements.

BCP has not submitted any information to show that the agency's evaluators are incorrect regarding what constitutes hazardous materials under the UK statutes and regulations, but only generally disagrees with the agency's position. Such

disagreement, without more, does not provide a basis for our Office to find the agency's evaluation unreasonable. Ben-Mar Enters., Inc., supra.

In sum, the agency reasonably found Birdstrike's quotation unacceptable under the mission support plan subfactor and, in accordance with the RFQ evaluation scheme, unacceptable overall.

The protest is denied.

Lynn H. Gibson  
General Counsel