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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-218191; B-218191.2 DATE: May 22, 1985

MATTER OF: RCA Service Company; Harbert International,
Inc. & Morrison-Knudsen Services, Inc.,
A Joint Venture

DIGEST:

1. Protests against exclusion of proposals from competitive range is denied where protesters have not shown that evaluations finding protesters' proposals unacceptable were unreasonable.
2. Contention that evaluation that found proposal deficient was based on elements not explicitly identified in solicitation as evaluation factors is without merit where solicitation adequately identified criteria as basis of evaluation.
3. Where proposal is properly rejected as technically unacceptable, offered cost is irrelevant as the proposal could not be considered for award.
4. There is no obligation for a contracting agency to hold discussions with an offeror judged to be outside the competitive range.

RCA Service Company (RCA) and Harbert International, Inc. and Morrison-Knudsen Services, Inc., a Joint Venture (Harbert), protest the exclusion of their proposals from the competitive range under request for proposals (RFP) No. DABT02-84-R-0060, issued by the Department of the Army for the operation of the Directorate of Engineering and Housing (DEH) at Fort McClellan, Alabama.

We deny the protests in part and dismiss them in part.

The RFP, issued as part of a cost comparison under Office of Management and Budget Circular No. A-76, sought a contractor to staff, manage, operate and administer the DEH work currently being performed in-house by the Army. The RFP contained a performance work statement (PWS) which detailed specifications for all of the tasks involved in performing the contract.

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The RFP required that the technical, management and cost portions of the proposal be submitted in separate volumes, and provided a detailed statement of proposal format and content. Offerors were advised that the technical evaluation factors were general management and comprehension of specification requirements. The management evaluation factors were organization and staffing; offeror's experience in contract support services, and adequacy of phase-in plan. The RFP provided that proposals were to be evaluated for technical acceptability, managerial strength and cost realism. Under the RFP evaluation criteria, technical acceptability and cost realism were of approximately equal importance and were ranked higher than managerial strength.

The source selection evaluation board (SSEB) found that RCA's management and technical proposals were unacceptable and that Harbert's management proposal was marginally acceptable and that its technical proposal contained numerous deficiencies. The SSEB recommended that both offeror's proposals not be included in the competitive range. Based on the SSEB findings, the contracting officer determined that RCA's and Harbert's proposals were too deficient to remain in consideration without such modification as to constitute a completely new proposal and advised both offerors that their proposals would receive no further consideration. Both firms protested the rejection of their offers.

Initially, we point out that the evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best methods of accommodating them. Western Graphtec, Inc., B-212971, May 14, 1984, 84-1 C.P.D. ¶ 517. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. See Essex Electro Engineers, Inc.; ACL Filco Corp., B-211053.2, B-211053.3, Jan. 17, 1984, 84-1 C.P.D. ¶ 74.

Further, we have held that, in reviewing an agency's evaluation, we will not evaluate the proposal de novo, but instead will only examine the agency's evaluation to ensure

that it had a reasonable basis. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 C.P.D. ¶ 335. In addition, the protester bears the burden of showing that the agency's evaluation was unreasonable. Potomac Scheduling Co.; Axxa Corp., B-213927, B-213927.2, Aug. 13, 1984, 84-2 C.P.D. ¶ 162.

RCA Protest

Although the agency found RCA's management and technical proposals unacceptable, in its notice rejecting RCA's proposal, the contracting officer identified only the following deficiencies in RCA's management proposal. These deficiencies concerned: (1) education/experience of key personnel; (2) organizational structure; (3) staffing/shop supervision; (4) phase-in plan; (5) transition plan and personnel; (6) startup personnel; and (7) operating procedures specified. The first three concern organization and staffing and the remaining four concern the adequacy of the phase-in plan.

With regard to the Army's determination that RCA's proposal included deficient staffing, the RFP called for firms to offer assurance of expeditious and economical performance of the services required. In order to assist offerors in determining the level of staffing necessary to perform the contract, the PWS provided workload data based on historical data, work experience and technical estimates provided by functional managers for the various tasks required.

RCA's proposal indicated its staffing for the project and explained that this level of staffing was developed after an extensive analysis of each task and function in the PWS, review of the Army guidelines on staffing and productivity and of the applicable regulations on facilities engineering responsibilities, and comparison with its experience in managing similar facilities and base operations contracts.

The SSEB, however, found that RCA underestimated the manpower requirements for more than one-third of its proposed positions. For example, the PWS provided that

carpentry skills were utilized 11,392 hours for accomplishing nonrecurring individual job orders in the previous year, but, assuming each worker works the maximum available hours annually with only 10 percent lost productive time, RCA did not propose to include enough carpenters on its staff to meet this requirement. The Army noted that RCA did not even intend to have all of its carpenters work the maximum available hours, nor did it propose any plans to compensate for the insufficient number of workers. Furthermore, the Army points out that this workload data does not take into account the other types of work, such as service orders, required under this contract.

RCA states that the Army used arbitrary staffing levels which are not supported by the RFP and that it has provided sufficient personnel to perform every task. It asserts that it used the Army's time standards for the performance of facilities engineering tasks in developing its proposed staffing. It adds that it requires less manpower than the government because its productivity rate is at least 15 percent greater than the government's due to several innovations and work management techniques included in its proposal. RCA further complains that the PWS was very general in nature and consequently offerors had to estimate the workload hours necessary to perform the contract based on either the hours the Army used to perform the functions or very general work descriptions. Finally, RCA believes that the Army's statements indicate an attempt to dictate the contractor's staffing and organizational structure to conform to the in-house system currently operating rather than objectively evaluating RCA's offer on the basis of the PWS workload data.

RCA, however, does not provide the actual analysis performed in developing its proposed level of staffing, stating that this is proprietary information. The proposal on its face does not appear to provide sufficient manning and, even assuming a 20-percent increase in productivity over the government's past performance, under the carpentry example, RCA's proposed manpower still falls short of the historical workload data. We conclude that the protester's

contention that it made an extensive analysis of the staffing requirements without providing the Army the information used in this analysis does not provide a basis for us to determine that the Army's conclusion of insufficient staffing was unreasonable. An offeror must demonstrate affirmatively the merits of its proposal and it runs the risk of proposal rejection if it fails to do so clearly. Roach Manufacturing Corp., B-208574, May 22, 1983, 83-1 C.P.D. ¶ 547. We further note that there is no indication in the record that the agency judged RCA's proposal by use of other than the PWS workload data.

Furthermore, to the extent that RCA is questioning the adequacy of the description of tasks set forth in the RFP and PWS, its protest is untimely. Under our Bid Protest Regulations, protests based upon alleged improprieties in an RFP must be raised prior to the closing date for the receipt of initial proposals to be considered by our Office. 4 C.F.R. § 21.2(a)(1) (1985).

As to the various alleged deficiencies in RCA's phase-in plan for the 60-90 days beginning on the contract start date, the RFP instructed offerors to include four elements in their phase-in plan: (1) a detailed plan for the transition period (30-60 days prior to the contract start date); (2) indicate the proposed initial manning; (3) identify key personnel and indicate when they will begin; and (4) describe the approach to develop and disseminate operational instructions, procedures and control directives.

RCA's proposal provided for a transition and phase-in team consisting of permanent on-site management personnel and a home office task force. The firm's proposal included a manning schedule, indicating when each member of its staff would begin working, which was designed to permit its personnel to observe, become familiar with, and receive training in the government's operation without interrupting the work in progress.

The SSEB stated that the RCA proposal for phase-in essentially restated the RFP requirements. The SSEB found that RCA's manning schedule did not provide adequate manning for ensuring continuity during the conversion from

government to contractor operations. For example, the SSEB found that RCA did not provide the appropriate personnel during the transition period to prepare, review and complete the required deliverables (plans and listings for providing critical services required prior to the commencement of the contract); to carry out the firm's intention to revise and complete its policy statements, procedures and plans pertaining to this project; or to observe the government's operations. The evaluators further found that RCA failed to identify personnel responsibilities for the accomplishment of tasks during the transition period and to indicate which essential positions would be performing transition work during this period.

Initially, RCA contends that the solicitation did not specify the transition period plan and startup personnel as evaluation factors and that the agency improperly evaluated its offer by considering these two factors. We have held that the solicitation should inform all offerors of the basis for the evaluation of proposals and the evaluation must, in fact, be based on the scheme set forth in the solicitation. York Industries, Inc., B-210756.2, Apr. 24, 1984, 84-1 C.P.D. ¶ 463. However, while agencies are required to identify the major evaluation factors, they are not required to explicitly identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Human Resources Research Organization, B-203302, July 8, 1982, 82-2 C.P.D. ¶ 31.

Here, the solicitation instructed offerors to present in their phase-in plan a detailed plan for the transition period and to indicate proposed initial staffing. While the overall evaluation factor is the adequacy of the phase-in plan, in our view, an evaluation of this plan necessarily involves the transition period because that period involves preparation for assuming full operational responsibility on the first day of the phase-in period. In fact, in its protest, the protester recognized that there is an "obvious link" between the transition and phase-in periods. Similarly, we think the number and type of startup personnel is related to the phase-in plan since it indicates the contractor's ability to provide continuity of operations in the

change from government to contractor. Thus, in our view, the agency could properly consider these elements in the evaluation.

With regard to the evaluation of its proposal for the transition period, RCA argues that it proposed to complete all of the required events during the transition period and to staff its projects with sufficient manning, including all key personnel, during the transition period in order to facilitate the conversion in operations. It asserts that the Army has made an arbitrary decision of how many people would be needed during the transition period. RCA further states that the agency did not consider that a contractor is required to offer each existing government employee the right of refusal to take a job with the contractor and that the firm expects to keep much of the current work force, thus reducing its need for transition personnel. However, these arguments do not rebut the Army's finding that RCA failed to show how its proposed level of staffing during the transition would be able to achieve the work requirements. While its proposal provided for limited staffing in the early stage of the transition period, most of its supervisory personnel were scheduled to begin work toward the end of the transition period, and it failed to identify which of the personnel would perform the required transition tasks. Thus, in our view, the protester has not shown that the evaluators' determination that the transition plan and transition staffing was unacceptable to ensure the required continuity in operations was unreasonable. Moreover, there is no indication in the record that the agency judged RCA's phase-in plan by comparison with any guidelines other than those in the solicitation.

Under these circumstances, we cannot conclude that the agency's exclusion of RCA from the competitive range was unreasonable.

RCA also questions the propriety of the letter from the Army advising the firm that it had been excluded from the competitive range. It alleges that the Army did not comply with Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.1001(b) (1984), which requires the government to provide a basis for a decision to reject an offer, because the Army did not include any technical or cost realism deficiencies in its notice to RCA.

Before award, offerors whose proposals are excluded from the competitive range are entitled only to a general explanation of the basis for the competitive range determination. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299; SES, Inc., B-205961, Mar. 4, 1982, 82-1 C.P.D. ¶ 201. Even assuming the Army was obligated to notify RCA of the deficiencies found in the firm's technical and cost proposals, since RCA's management proposal was unacceptable, the Army's supposed omission did not prejudice RCA. See The Singer Co., B-211857.2, Feb. 13, 1984, 84-1 C.P.D. ¶ 177.

Harbert Protest

The SSEB awarded approximately 27 percent of the total possible points to Harbert, which was significantly lower than the points awarded to the offerors in the competitive range. This was based on the SSEB's view that Harbert's technical proposal contained deficiencies in the following areas: (1) quality control; (2) labor relations and training; (3) fire and safety; and (4) mission function responsibility. The SSEB also found that the proposal was too general.

Harbert argues that its technical proposal was improperly evaluated. It contends that it included plans consistent with the RFP's requirements for fire and safety, labor relations and a detailed training plan for quality control. Harbert further states that all missions and functions required by the RFP were assigned as duties of certain units or individuals in the organization. It also denies that its technical proposal was too general, asserting that its proposal responded to all of the requirements and it offers to provide additional details now. Harbert asserts that the real reason its proposal was precluded from the competitive range was that the proposed manning and thus the cost was substantially less than that contained in the government's proposal.

We find that the Army's technical evaluation of Harbert's proposal and exclusion of the firm from the competitive range was reasonable. The most significant cited deficiency was that the technical proposal was too general because this indicated to the Army evaluators the

firm's lack of comprehension of specification requirements. In this connection, we previously have found insufficient proposals which contain restatements of specifications or which lack detail to satisfy an RFP requirement for specific and detailed responses. See Essex Electro Engineers; ALC-Filco Corp., B-211053.2, B-211053.3, supra. The solicitation advised offerors that:

" . . . the technical proposal should be sufficiently specific, detailed and complete to clearly and fully demonstrate that the prospective offeror has a thorough understanding of the requirements for, and technical problems inherent in, the achievement of the specifications, and work program herein described, and has a valid and practical solution for each contemplated problem. It is realized that all of the technical factors cannot be detailed in advance; however, the technical proposal shall contain sufficient detail to indicate the proposed means for complying with all applicable specifications and shall include a complete explanation of the techniques and procedures to be exercised. . . . Statements that the prospective offeror understand, can or will comply with all specifications, [and] statements paraphrasing the specifications or parts thereof . . . will be considered insufficient."

More specifically, with regard to the comprehension of specification requirements, the RFP informed offerors that:

"Your proposal must provide evidence that you recognize the scope of services that you will be required to provide under the proposed contract. Explain work control methods, interaction between organizational elements, and demonstrate your understanding of applicable methodology that you would be required to satisfy."

The SSEB found that, despite these instructions in the RFP, Harbert's proposal provided limited information on the specification requirements, often essentially restating the

PWS or stating that it would perform the services as required. The SSEB determined that this failure to adequately address the PWS requirements did not allow a detailed evaluation of Harbert's comprehension of specification requirements and concluded that, on the basis of the limited information provided, Harbert did not understand the requirements. For example, the Army determined that Harbert's proposed security program provided brief details and essentially acknowledged security concerns such as gate control, equipment protection and facility security without providing sufficient detail to show comprehension of RFP requirements.

In addition, the SSEB also found that Harbert failed to include a sufficient labor relations and training program. In this regard, the RFP instructed offerors to:

"Present your plans for obtaining and retaining all of the personnel indicated on your organizational chart. . . . Discuss your plan to develop, train and bring to an efficient operational status an experienced team necessary to perform the required services. . . . Set forth procedures to be utilized to continue mission if faced by work stoppage or strike."

The SSEB found that Harbert's proposal indicates the firm has a corporate labor relations department, but it does not detail how the firm intended to use those corporate services. The Army also found that the proposal provided only a general plan of action in case of a strike, stating that a detailed plan would be provided upon award. Furthermore, it did not specify a training or apprenticeship program of any kind and it did not provide a detailed recruiting plan. On these bases, the Army concluded that the firm did not provide a comprehensive labor relations and training program.

Similarly, the Army evaluators found Harbert's quality control program was weak because its proposed unscheduled inspections were limited only to areas in which it has had frequent complaints and was dependent on consumer complaints rather than contractor determined areas of concern. We have no basis to disagree with these stated deficiencies in the proposed quality control.

Harbert merely claims in its protest that it responded to the solicitation's requirements for a security program, labor relations and training and quality control. It has not provided any basis for establishing that the agency acted unreasonably. Thus, Harbert's protest constitutes a mere disagreement with the agency's evaluation and the protester has therefore failed to meet its burden of proof. See Leo Kanner Associates, B-213520, supra. As to Harbert's offer to provide additional details, a technical evaluation must be based on the information submitted in the proposal. If an offeror does not submit an adequately written proposal, it will not be considered in the competitive range in a negotiated procurement. Micronics, Inc., B-215266, Nov. 13, 1984, 84-2 C.P.D. ¶ 521.

With regard to Harbert's contention that it is actually being rejected because of its proposed manning, the record does not indicate that Harbert's proposal was found technically unacceptable due to its proposed manning. Furthermore, to the extent Harbert is suggesting that its low manning costs may have been a basis for rejection of its offer, cost is irrelevant here since Harbert's offer properly was rejected as technically unacceptable. Rice Services, B-218001.2, Apr. 8, 1985, 85-1 C.P.D. ¶ ____.

Under these circumstances, we cannot conclude that the agency's exclusion of Harbert's proposal from the competitive range was unreasonable.

Finally, Harbert requests a conference with the agency to discuss correction of the deficiencies of its proposal. The firm, however, is not entitled to discussions since its proposal was properly determined to be outside the competitive range. BASIX Controls Systems Corp., B-212668, July 2, 1984, 84-2 C.P.D. ¶ 2. We also note that under the FAR, § 15.1002(b), 48 Fed. Reg. § 15.1002(b) (1984), an unsuccessful offeror may request a debriefing after award, not before.

The protests are denied in part and dismissed in part.

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