



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Computerized Project Management Plus
File: B-247063
Date: April 28, 1992

C. Kevin Bond, Esq., Corona, Balistreri & Ramseyer, for the protester.
L. James Tillman, Department of Energy, for the prime contractor.
John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposal was properly downgraded under a procurement for technical support in the development and implementation of project management systems conducted by a Department of Energy management and operation contractor where the proposal primarily referenced, without substantive explanation, the protester's experience as the incumbent contractor; there is no legal basis for favoring a firm with presumptions on the basis of an offeror's prior performance.

DECISION

Computerized Project Management Plus (CPM) protests the rejection of its offer and the award of a contract to KMI Services under request for proposals (RFP) No. 9-X51-W9764, issued by the University of California/Los Alamos National Laboratory, for technical support in the development and implementation of project management systems for certain programs and projects at Los Alamos National Laboratory (LANL). The University of California is a prime contractor of the Department of Energy (DOE), managing and operating LANL on behalf of DOE.

We deny the protest in part and dismiss it in part.¹

¹Since, contrary to the protester's assertions, federal procurement statutes and regulations do not apply per se to a management contractor operating by and for the government (such a contractor must conduct procurements in accordance with its prime contract with the agency and its own agency-approved procedures), our review is limited to determining whether the procurement conforms to the "federal norm,"

The RFP, issued on June 10, 1991, sought technical support services in the development and implementation of project management systems for LANL. The RFP contemplated a base contract period of 1 year and four 1-year options. The solicitation listed the following as the technical evaluation criteria:²

1. Primavera/Parade Software Experience
2. Technical Personnel
3. Corporation
4. Management

The solicitation also informed offerors that in performing the evaluation, the Primavera/Parade software experience criterion was the most important criterion and would be equal to the combined weight of the other three criteria. The RFP further provided that award of the contract may be made without conducting discussions and therefore initial proposals should contain the offerors' most favorable terms.

Six proposals, including the protester's, were received by the RFP's closing date of July 10, 1991. The technical proposals were evaluated and point scored. KMI was the top ranked offeror with a score of 82.6 points on a 100 point scale. CPM was the fourth ranked offeror with a score of 63.8 points. Award was made to KMI on the basis of initial proposals because KMI's proposal was found to be significantly better than any of the other proposals received. This protest followed.

CPM, the incumbent contractor, first complains that the evaluation of its technical proposal was unreasonable because the technical evaluators found that CPM's proposal relied primarily on its reference, without substantive explanation, to its performance on the predecessor contract. With regard to the most heavily weighted Primavera/Parade software experience criterion, the technical evaluation found that CPM's proposal did not discuss "specific Primavera work accomplished or developed" by CPM. The evaluators also determined that CPM's proposal did not adequately explain how certain tasks would be accomplished. As a result, the evaluators concluded that "[t]he extent to which Primavera is being used, resources available, and the company's technical skill cannot be evaluated."

i.e., the policy objectives in the federal statutes and regulations. Elma Eng'g, 70 Comp. Gen. 81 (1990), 90-2 CPD ¶ 390.

²Subcriteria were stated for each of the four evaluation criteria.

CPM complains here that the evaluators, who were familiar with CPM's performance, treated it "unfairly" because they scored its "[offer] within the four corners of the proposal," and did not "consider any knowledge they had of the work presently being performed by CPM" that was not reflected in its proposal. CPM adds that any informational deficiencies in its proposal should have been rectified by examining the performance of CPM on the predecessor contract and through "communication" with CPM.

CPM's reliance on its status as the incumbent is misplaced. A contracting activity's technical evaluation of a proposal is dependent upon the information furnished in the proposal. All Star Maint., Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294. There is no legal basis for favoring a firm with presumptions on the basis of the offeror's prior performance; rather, all offerors must demonstrate their capabilities in their proposals. Id. As CPM's sole objection to the evaluation of its technical proposal involves the activity's consideration of only the information furnished in CPM's proposal, and this manner of evaluation comports with the policy objectives in federal procurement statutes and regulations, we have no basis on which to conclude that the contracting activity acted unreasonably in its evaluation of CPM's proposal.³

CPM also challenges the evaluation of KMI's technical proposal under the Primavera/Parade software experience criterion. CPM points to the evaluators' determination that KMI's proposal "demonstrated experience and proficiency in the use of Primavera/Parade software," and argues that the evaluation "defies logic because KMI is not even a licensed or authorized user" of Primavera/Parade software.

The determination of the relative merits of proposals is primarily the responsibility of the contracting activity, which must bear the burden of any difficulties resulting from a defective evaluation. Elma Eng'g, supra. In reviewing challenges to the evaluation of a technical proposal in the context of an award of a subcontract by a government prime contractor "by or for the government," we will not reevaluate the proposal and independently judge its merits, but instead will consider whether the evaluation was reasonable and in conformance with the policy objectives in the relevant federal statutes and regulations. Id.

³Also, "contrary to the protester's assertions, the contracting activity's failure to consider information beyond CPM's offer does not violate any provision of the DOE Acquisition Regulations (DEAR) applicable to purchases by DOE management and operating contractors. DEAR Subpart 970.71.

We have reviewed KMI's proposal, and contrary to CPM's position, do not find the contracting activity's determination that KMI demonstrated outstanding experience and proficiency in the use of Primavera/Parade software to be unreasonable. The resumes of all of the KMI personnel who will comprise the on-site staff for this contract evidence considerable experience in the use of Primavera/Parade software, as do the resumes for the majority of personnel identified as on-call staff. For example, one of the project management specialists identified in KMI's proposal wrote a Primavera users/training manual for the Jet Propulsion Laboratory,⁴ while the individual proposed as the Primavera Implementation/Program Management Specialist is identified as the western regional representative of the corporation which supplies Primavera software. Further, we note that the solicitation did not require that offerors be licensed to use Primavera/Parade software, inasmuch as LANL is a licensed user of the software and the successful offeror will have a derivative license for its use.

Accordingly, we find that the record supports the reasonableness of the evaluation and the conclusion that KMI's proposal was technically superior.

CPM complains that no discussions were conducted prior to award. As noted in the solicitation, LANL reserved the right to make an award without discussions. Since KMI's technically superior proposal, which was found to offer a fair and reasonable price, was clearly most advantageous to the government, we do not regard the agency's failure to conduct discussions to be violative of the federal norm.⁵ See CVC Prod., Inc., B-229467, Oct. 31, 1986, 86-2 CPD ¶ 506.

CPM also argues that "the solicitation must be declared invalid" because it "did not contain any information concerning how prospective bidders were to prepare and format their respective proposals." The protester's argument here, raised for the first time in its protest to our Office filed more than 5 months after the closing date for receipt of proposals, is untimely and will not be considered. Under our Bid Protest Regulations, a protest against alleged solicitation improprieties must be filed no later than the time set for receipt of initial proposals.

⁴The Jet Propulsion Laboratory is a federally funded research and development center for the National Aeronautics and Space Administration.

⁵DEAR § 970.7103(c)(3)(xii) only requires and a management and operating contractor to conduct negotiations "as may be appropriate" to satisfy the federal norm.

4 C.F.R. § 21.2(a)(1); KCI, Inc., B-244690, Oct. 29, 1991,
91-2 CPD ¶ 395.

The protest is denied in part and dismissed in part.



for James F. Hinchman
General Counsel