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

Decision

Matter of: Systematic Management Services, Inc.
File: B-250173
Date: January 14, 1993

John W. Fowler, Jr., Esq., Saul, Ewing, Remick & Saul, for the protester.
Ronald E. Cone, Department of Energy, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency properly evaluated the protester's proposal as technically deficient and excluded the firm from the competitive range after the agency reasonably found that the firm had no reasonable chance for award because the firm's proposal contained significant technical deficiencies, including the unacceptability of four of its five proposed key personnel.
2. Protest concerning alleged procurement integrity violations by agency personnel is untimely where protest was not filed until more than 10 days after protester knew or should have known of basis of protest.

DECISION

Systematic Management Services, Inc. (SMS) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DE-RP01-92EW10279, issued by the Department of Energy (DOE) for a cost-plus-fixed-fee, level of effort contract to provide engineering and administrative support services for 3 years and a 2-year option.¹

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

¹The procurement is also referred to as the EM-10 procurement because the services are in support of a component of DOE's Environmental Restoration and Waste Management Program's (EM) Office of Planning and Resource Management that is designated EM-10.

The RFP, issued on May 26, 1992, required support services in five work areas: (1) engineering and technical analysis support for environmental restoration/waste management specialized studies; (2) quality assurance and assessment support activities; (3) Office of Planning support activities; (4) task force support; and (5) education, training, and logistical support for outreach activities. The RFP, as amended, called for the submission of proposals in three volumes (technical, cost, and business management). The technical proposal was to address the offeror's approach to the technical aspects of the acquisition, the offeror's capabilities, and what the offeror would do to satisfy service requirements in the five work areas.

Offerors were informed that their technical proposals were significantly more important than their business management proposals, and each of these was of greater importance than the cost proposal. The RFP listed four technical criteria: (1) personnel qualifications and availability, (2) technical approach, (3) project organization and management, and (4) corporate qualifications. The RFP stated that the first three criteria were of approximately equal value, with the second criterion having slightly more value than the first, and the first being slightly more important than the third.

The agency received a number of proposals by the July 8 closing date.² Based on its evaluation of the proposals, the agency established a competitive range that excluded SMS' proposal. The contracting officer found that SMS had no reasonable chance of receiving the award because it failed to fully address various critical RFP requirements and because its proposed key and other personnel were rated as poor.

SMS protested its elimination from the competitive range to our Office. The agency submitted a detailed and complete agency report addressing SMS' elimination from the competitive range, including the complete evaluation documentation. DOE eliminated SMS from the competitive range based on the numerous evaluated deficiencies in SMS' proposal that DOE believed would require a major revision of SMS' proposal to correct.

²We have not disclosed the identities of the competitive range offerors, their point scores, or their relative rankings to avoid detrimentally affecting the continuing competition for this award. See ALM, Inc., 65 Comp. Gen. 405 (1986), 86-1 CPD ¶ 240, at n. 2.

SMS' primary technical deficiencies involve the second most important technical criterion, personnel qualifications and availability, where it received a "poor" score. Specifically, SMS had proposed five key personnel, and all were evaluated as lacking, to various degrees, the required relevant experience; indeed, four of the five key personnel received less than "acceptable" ratings.³ Also, SMS' response to the non-key personnel subcriterion was considered "poor," since various proposed personnel did not meet the minimum position requirements and SMS failed to demonstrate how or who it planned to use to accommodate work load fluctuations and short notice assignments.

In addition, the agency found that SMS' proposal did not adequately address other critical RFP requirements. For example, SMS' proposal did not demonstrate how the logistical support functions for the task force support work area would be integrated with the functions of the other work areas. With regard to the training, education, and public outreach work area, SMS' proposal was found to have an inadequate technical approach, a lack of details, a failure to include "an essential needs assessment phase for the identification of training requirements," and a proposed subcontractor who lacked federal training experience. With regard to the project organization and management criterion, the SMS proposal allegedly did not show whether the project manager retained sufficient authority to be effective vis-a-vis an internal corporate oversight group. Finally, the SMS proposal was found not to provide an effective plan of corporate commitment and the letters of commitment of SMS' proposed key personnel did not promise sufficient total commitment and availability of staff.

In its comments on the agency report SMS primarily questioned DOE's determination to draw the cut-off line for competitive range purposes at a point above SMS' ranking, focusing on the lowest ranked of the competitive range offerors (hereinafter Offeror-X). While SMS acknowledges that Offeror-X's proposal was evaluated higher than SMS' proposal, SMS argues that it was unreasonable to include

³With regard to key personnel subcriterion, the RFP instructed offerors to submit one resume for each of the five key positions and letters of commitment showing the proposed personnel were "dedicated to the project for 100 percent of their time." The RFP set out minimum qualifications for the positions and warned offerors that if they proposed personnel that did not meet a position's minimum requirements they must note the deficiency and "submit a rationale which clearly explains why these personnel are otherwise qualified to fill the position."

Offeror-X in the competitive range while excluding SMS, since, according to SMS, its proposal was comparably rated to that of Offeror-X. SMS contends that Offeror-X's proposal could only have been included in the competitive range with the understanding that it was subject to improvement through discussions. SMS argues that its proposal is equally subject to improvement through discussions and therefore should have been included in the competitive range.

SMS states, in general terms, that its proposal was misevaluated as a result of agency misunderstandings and that a proper evaluation would substantially increase SMS' relative ranking and would leave only readily correctable informational deficiencies. Notwithstanding SMS' possession of the detailed information concerning DOE's evaluation of the SMS proposal,⁴ SMS only addressed three specific areas of claimed DOE misevaluation: (1) that DOE ignored or overlooked information in the resumes of personnel proposed by SMS (SMS cited only a single resume of a senior program analyst); (2) that DOE misinterpreted key personnel commitment letters to SMS and compounded the consequences of its misinterpretation by deducting points under two different subcriteria; and (3) that DOE improperly downgraded SMS' proposal for failing to identify the effect that SMS' receipt of the contract would have on SMS' revenue.

⁴With a submission filed almost a month after its timely filed comments on the agency report, SMS provided a spreadsheet, "Exhibit-B," entitled "EM-10 Evaluation Matrix," which provided, for the first time, a detailed specific rebuttal of the agency report's listing of SMS' proposal's deficiencies. The information presented in Exhibit-B had been in SMS' possession since it received the agency report, which was more than a month before SMS filed the submission containing Exhibit-B. Under the circumstances, SMS cannot now use Exhibit-B, and arguments based on this exhibit, to challenge aspects of the evaluation beyond those initially challenged in its comments on the agency report. Our Regulations do not permit the unwarranted piecemeal development of a protest, where, as here, there is no reason the protester could not have earlier raised the contentions. 4 C.F.R. § 21.2(a)(2) (1992); JWK Int'l Corp.; vs Bauer Assocs., Inc., B-229831.4; B-229831.5, Sept. 29, 1988, 88-2 CPD ¶ 298; vs Bauer Assocs., Inc.--Recon., B-229831.7, Mar. 2, 1989, 89-1 CPD ¶ 218.

Our examination of an agency's decision to exclude a proposal from the competitive range involves our review of the agency's evaluation of proposals. Salazar Assocs. Int'l, Inc., B-245999.2, Apr. 29, 1992, 92-1 CPD ¶ 403; Advanced Sys. Tech., Inc.; Eng'g and Prof. Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. Generally, the evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the agency's evaluation to ensure that it was reasonable and in accord with stated evaluation criteria and not in violation of procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 263. The offeror has the burden of submitting adequately written proposals and proposal revisions for the agency to evaluate. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530, and an offeror's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43.

A major reason for SMS' low rating was the agency's determination that SMS' proposed key personnel lacked the minimum required experience. Specifically, DOE found that four of its five proposed key personnel's resumes did not evidence acceptable experience and qualifications.

As stated above, SMS' comments on the agency report only generally dispute this finding and only cite a single resume that DOE assertedly miscalculated.⁵ SMS challenged DOE's determination that a proposed senior program analyst had no planning experience and no background in environmental restoration and waste management activities. SMS states that while DOE could question the relevancy of this individual's experience, it could not reasonably conclude that he had no experience.

The RFP required at least 7 years of "related experience"⁶ in planning, project oversight, developing costs, milestone schedules and general oversight, and "a demonstrated

⁵As discussed in note 4, SMS untimely submitted a detailed critique of DOE's rating of the personnel criteria.

⁶DOE reports, and SMS does not contest, that "[t]hroughout the Statement of Work, related experience refers to environmental restoration and waste management experience."

familiarity with the type of technical activities described in the statement of work as a minimum requirement." The RFP stated that "[p]ast significant roles in major aspects of waste management and environmental restoration project/program management are highly desirable." We find no effective rebuttal in the record to DOE's conclusion that the proposed key person in question here did not have a minimum of 7 years' relevant experience and only had approximately 3 months (April 1992 to July 1992--the RFP closing date) of such experience. Even this recent experience was as a cost-engineer, not as a manager, which was the responsibility this individual would have under the contract. While it may be an exaggeration for DOE to assert this individual had no experience, the record reasonably supports DOE's determination that he lacked the necessary experience and qualifications.

Based on our review of SMS' key personnel resumes and the evaluation documentation, we find that DOE's evaluation was reasonable. The resumes did not establish the required quality or quantity of experience and qualifications described in the RFP.

SMS also protested DOE's evaluation of the commitment letters submitted by SMS key personnel. SMS contends that DOE's concerns stem from DOE's misinterpretation of the commitment letters and that DOE improperly penalized SMS under two evaluation subcriteria: key personnel and corporate commitment. The SMS commitment letters in question read:

"This letter affirms my commitment to [SMS] . . . in its goal to successfully complete the Technical and Program Support Services Contract to the Office of Planning and Resource Management (EM-10), I am committed to being assigned by SMS to this contract. Upon award of the contract to SMS, I am willing to begin my work assignment, as may be required, to fulfill SMS' commitments to the client."

SMS states that it inserted the phrase "as may be required" in recognition of the fact even if SMS received the contract, it could not charge the proposed employee to the contract until DOE issued a Task Assignment. DOE read the phrase as indicating that the proposed employee may have limited availability. While contracting agencies must be "reasonably assured" that the key employees are firmly committed to the offeror, see Management Servs. Inc., 55 Comp. Gen. 715 (1976), 76-1 CPD ¶ 74; Development Alternatives, Inc., B-217010, Feb. 12, 1985, 85-1 CPD ¶ 188, DOE may have read the commitment letters too narrowly. The

record shows that SMS was only downgraded under the corporate commitment subcriterion of the corporate qualifications criterion, which was lightly weighted in the overall evaluation scheme, and not under the key personnel subcriterion. In our view, even if the agency was overly strict in its reading of the commitment letters, SMS was not prejudiced, since restoring points under the corporate commitment subcriterion would only marginally improve the evaluation of its proposal, was not enough for it to be included in the competitive range.


Finally, SMS contends that DOE improperly downgraded SMS' proposal for failing to identify the effect that SMS' receipt of the contract would have on SMS' revenue. SMS asserts that its proposal clearly stated the exact percentage impact on SMS' revenue. Under the corporate commitment subcriterion, offerors were required to provide an evaluation that included "an analysis of the priority that the firm places on the subject contract work considering the impact of the contract on the company resources and the percentage of the offeror's total work that this contract would represent." In other words, the agency sought to assess the impact of a contract award on the firm's assets. On the other hand, the Business Management Proposal, under Financial Condition and Capability, subpart (iii), required the statement of a specific percentage that the proposed contract represents of the offeror's estimated total business during the period of performance. DOE reports that SMS was credited for providing the required percentage in the business proposal evaluation, but downgraded under the corporate commitment subcriterion for not providing an analysis of the impact of a contract award on the firm's resources. Our review confirms that the requested analysis for the corporate commitment subcriterion was not provided, and DOE properly evaluated this aspect of SMS' proposal.

Based on the number and severity of the SMS' proposal deficiencies, DOE reasonably concluded that a major revision of SMS' proposal would be necessary for the proposal to be included in the competitive range. While SMS asserts that its proposal was similarly rated to the lowest rated offer included in the competitive range, we do not agree. Also, DOE took into account the fact that SMS' proposed costs substantially exceeded the cost of that offeror in deciding not to include the firm in the competitive range. Based on our review, we find that DOE reasonably excluded SMS from the competitive range because it did not have a reasonable chance of being selected for award. See ALM, Inc., B-217284; B-217284.2, Apr. 16, 1985, 85-1 CPD ¶ 433.

During the course of this protest, SMS discussed several issues concerning alleged violations of the procurement integrity laws. Specifically, the protester alleged that a retired DOE employee and a current DOE employee may have violated the procurement integrity laws and that DOE's investigation did not conform with the requirements of FAR §§ 3.104-6(d) (describing the procedures for government employees to follow when filing recusal proposals); and 3.104-11 (procedures for processing violations or possible violations).

Protests based on alleged improprieties in a solicitation must be filed not later than 10 days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, SMS does not state when it became aware of the former DOE employee's actions, which it verbally brought to DOE's attention on October 28, although the record shows these actions occurred in April of 1992. With regard to the alleged procurement integrity violation regarding the current DOE employee, which SMS informally brought to DOE's attention on October 29, SMS has provided an affidavit stating that SMS was apprised of the basis for this contention on October 16. While SMS verbally raised both matters with DOE, by its own admission these did not constitute protests to the agency, and SMS did not bring the matters to our attention until it filed a November 24 document with our Office, more than 3 weeks after discussing the matters with DOE. It stated in the November 24 filing and in a document filed with our Office on December 3 that, in reporting the allegations to DOE, SMS did not intend to submit protests and that it had not protested the matters to GAO. While SMS later sought to characterize its complaints as additional protests based on information provided in agency bid protest reports, the firm's complaints arising out of alleged procurement integrity violations were not timely filed under our Bid Protest Regulations. See Biomedical Research Inc., B-249522, Nov. 25, 1992, 92-2 CPD ¶ , at n. 5; Kimmins Thermal Corp., B-238646.3, Sept. 12, 1990, 90-2 CPD ¶ 198.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel