



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Docusort, Inc.

File: B-254852

Date: January 25, 1994

Michael J. Van Dyke, Esq., Smith, Gill, Fisher & Butts, for the protester.

Edward J. Obloy, Esq., and Lynn W. Flanagan, Esq., United States Department of Agriculture, for the agency.

Behn Miller, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to conduct meaningful discussions with the protester is denied where record shows that during discussions agency adequately identified the deficiency in the protester's proposal--the lack of experience of its proposed assistant project manager--and gave the protester the opportunity to revise its proposal to remedy this deficiency.

2. Although an agency may use a traditional responsibility factor, such as a minimum management experience requirement, as a technical evaluation factor where its needs warrant a comparative evaluation of proposals, an agency's rejection of a small business concern's proposal as technically unacceptable based solely on the offeror's failure to comply with such a factor, without referring the matter to the Small Business Administration, is improper where the agency's decision is not based on a relative assessment of the proposal but effectively constitutes a finding of nonresponsibility.

DECISION

Docusort, Inc. protests the rejection of its proposal under request for proposals (RFP) No. KCMO-06-N-93, issued by the United States Department of Agriculture (USDA) for all labor, equipment, tools, materials, supervision and services necessary to operate the mailroom located at the Agricultural Stabilization and Conservation Service building in Kansas City. Docusort, the incumbent contractor for this requirement, contends that its proposal was improperly rejected as technically unacceptable.

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

BACKGROUND

On July 15, 1993, the agency issued the RFP as a total small business set-aside to 110 prospective offerors. The solicitation contemplated the award of a fixed price contract for a base year and 3 option year periods, and provided that contract award would be made to the lowest priced, technically acceptable offeror.

The solicitation provided for a two-step evaluation process. First, offerors were to submit a technical proposal demonstrating their compliance with 12 "elements" set forth in section M.2, "EVALUATION FACTORS FOR AWARD."¹ In particular, element 3, "Key Personnel," provided:

"The offeror must demonstrate that it has or will have in its workforce the key personnel . . . to manage performance and supervise the work under this contract. Minimum standard for key personnel is two years management and one year assistant management experience on a similar sized mailroom project."

The solicitation required offerors to propose candidates and provide corresponding resumes for a "Project Manager" and an "Assistant Project Manager" position.² The solicitation further provided that all offerors found to be technically acceptable under each of the 12 identified evaluation elements, including "Key Personnel," would be asked to submit price proposals.

On July 29, the agency conducted a preproposal conference and site visit which nine offerors, including Docusort, attended; on August 2, the agency issued several amendments

¹The other 11 elements were identified as: Work Plan; Similar Experience; Acquisition of Resources; Staffing; Transition Methodology; Operation of the Communication Center; Operation of the Addressing System; Schedule of Runs/Service; Security; Quality Assurance Activities; and Problem Resolution. As set forth in the solicitation, all 12 elements were of equal importance.

²The solicitation also required offerors to propose a candidate for the "Equipment Custodian/Quality Assurance Manager" position; however, the solicitation advised offerors that the Assistant Project Manager and Equipment Custodian/Quality Assurance Manager were not required to be separate individuals. Thus, at their discretion, offerors could propose one individual to simultaneously fill both positions.

which set forth the transcribed minutes of the preproposal conference, answered offerors' questions presented at the conference, and set a closing date of August 16.

On August 16, eight technical proposals were received; that same day, the contracting officer forwarded the proposals to a five-member technical evaluation panel (TEP) for review. From August 17 until August 23, the TEP conducted a pass/fail evaluation of the proposals under each of the 12 evaluation factor elements. At the conclusion of its evaluation, the TEP determined that one proposal was incapable of being made acceptable since it did not comply with any of the 12 elements; three proposals were technically acceptable under each element; and the remaining four proposals, including Docusort's, were "susceptible to being made acceptable" through written discussions.

On August 24, the contracting officer--relying on the TEP's recommendation--made a competitive range determination which included all but the unacceptable proposal in the competition. That same day, the contracting officer issued written discussion letters to each of the four "susceptible to being made acceptable" offerors. Docusort was advised that its proposed Assistant Project Manager lacked the requisite 1-year similar mailroom project experience specified in element 3 of the evaluation factors. Docusort was asked to:

"[p]lease clarify how your firm intends to meet the [g]overnment's minimum requirements in this area. You are requested to update the current Assistant Project Manager's resume in order to reflect the current position."

Apparently, when it submitted its initial proposal, Docusort submitted an outdated resume for its proposed Assistant Project Manager; that is, the resume did not reflect that this individual had in fact been performing in this position under the incumbent contract for the previous 9 months.¹

On August 27, Docusort provided an updated resume which properly reflected its proposed Assistant Project Manager's experience. In its letter, Docusort also asserted that this proposed individual had been hired as the Assistant Project Manager only after obtaining the approval of two agency officials who were currently serving on the TEP for this procurement. Docusort also stated that during her 9 months

¹Because it was a successfully performing incumbent, Docusort did not believe an updated resume was required since the agency would already be familiar with Docusort's current Assistant Project Manager.

of performance as the Assistant Project Manager, Docusort's proposed individual "has proven herself to be more than satisfactory in the position."

On August 31, the TEP reconvened to evaluate the four "susceptible" offerors' responses to the contracting officer's clarification/discussion request. Upon reviewing Docusort's August 27 response, the TEP concluded that Docusort's proposal still remained technically unacceptable under the Key Personnel element since the proposed Assistant Project Manager had 9 months instead of the required 1 year management experience. Consequently, by letter dated September 2, the contracting officer advised Docusort that its proposal had been rejected as technically unacceptable.

On September 10, Docusort filed this protest with our Office. Although price proposals have been requested, price evaluation and contract award are being withheld pending our decision.

ANALYSIS

Meaningful Discussions

Docusort contends that the agency's rejection of its proposal as technically unacceptable was improper since the contracting officer failed to conduct meaningful discussions with respect to the experience of Docusort's proposed Assistant Project Manager.

Under Federal Acquisition Regulation (FAR) § 15.610, agencies are required to conduct meaningful discussions with all competitive range offerors; the requirement is satisfied by advising them of weaknesses, excesses, or deficiencies in their proposals which require amplification or correction and by affording them the opportunity to submit revised proposals. Crestmont Cleaning Serv. & Supply Co., Inc., Scott & Sons Maint., Inc., Son's Quality Food Co., B-2544486 et al., Dec. 22, 1993, 93-2 CPD ¶ ____. Contracting officers must balance a number of competing interests in selecting matters for discussion based on the facts of each acquisition. FAR § 15.610. They must point out proposal weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Dept. of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422. On the other hand, agencies are admonished by the FAR to protect the integrity of the procurement process by balancing the need for meaningful discussions against actions that result in technical leveling, (FAR § 15.610(d)), technical transfusion (FAR § 15.610(e)(1)), or auctions (FAR § 15.619(e)(2)). See SeaSpace Corp., B-252476.2, June 14, 1993, 93-1 CPD ¶ 462.

Consequently, agencies are not required to "spoon-feed" an offeror as to how to render its proposal acceptable. See ITT Federal Servs. Corp., B-250096, Jan. 5, 1993, 93-1 CPD ¶ 6. Nor are agencies required to afford offerors all-encompassing discussions; rather, they need only lead offerors generally into the areas of their proposals that require revision. SeaSpace Corp., supra.

In this case, the contracting officer's 4-page August 24 letter to Docusort explicitly apprised the protester that the qualifications of its proposed Assistant Project Manager were under question. In addition to expressly advising the protester that its proposed Assistant Project Manager "does not meet the required one year similar mailroom experience" criterion specified at element 3, the letter contained repeated references to the employee's experience deficiencies; for example, Docusort was advised that the employee appeared to have "no prior managerial or mailroom experience."

Through the "Key Personnel" evaluation element, the solicitation advised offerors that they were required to propose an Assistant Project Manager with 1 year of similar mailroom management experience. Given the detailed text of the discussion letter, we think Docusort clearly was on notice of the agency's concerns regarding its proposed Assistant Project Manager's experience. Consequently, we see no basis to conclude that the agency failed to conduct meaningful discussions with Docusort. See Califone Int'l, Inc., B-246233, B-246233.2, Feb. 25, 1992, 92-1 CPD ¶ 226.

Rejection of Docusort's Proposal

Docusort contends that USDA should have asked the Small Business Administration (SBA) to evaluate the firm for a possible Certificate of Competency (COC) because the reason it was not selected--non-compliance with the "Key Personnel" evaluation factor--constituted a finding of nonresponsibility. In this regard, the Small Business Act provides that a procuring agency may not preclude a small business concern from being awarded a government contract by reason of any element of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, without submitting the matter to the SBA for a COC; where the SBA issues a COC to a small business concern, the procuring agency must accept it as conclusive.⁴ 15 U.S.C. § 637(b)(7) (1980).

⁴Thus, Federal Acquisition Regulation (FAR) § 9.104-3(e) provides:

(continued...)

The technical subfactor on which Docusort's proposal was judged technically unacceptable--the lack of experience of its proposed Assistant Project Manager--traditionally is considered a responsibility factor, that is, a matter relating to Docusort's ability to perform the contract. See FAR § 9.104-1(e); Paragon Dynamics, Inc., 72 Comp. Gen. 142 (1993), 93-1 CPD ¶ 248; J & J Maintenance, Inc., B-251355.2, B-251355.4, May 7, 1993, 93-1 CPD ¶ 373; B & W Serv. Indus., Inc., B-224392.3, Oct. 2, 1986, 86-2 CPD ¶ 384. Traditional responsibility factors like experience, management and staff capabilities, and personnel qualifications may be used as technical evaluation factors in a negotiated procurement when a comparative evaluation of those areas is to be made. Clegg Indus., Inc., 70 Comp. Gen. 679 (1991), 91-2 CPD ¶ 145. Comparative evaluation means that competing proposals will be rated on a scale, relative to each other, as opposed to a pass/fail basis. Advanced Resources Int'l Inc.--Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348. If a comparative evaluation is not made, the agency, under the guise of making a technical evaluation of proposals, actually would be determining the responsibility of the offeror, in violation of the Small Business Act if the offeror is a small business. See Modern Sanitation Sys. Corp., B-245469, Jan. 2, 1992, 92-1 CPD ¶ 9.

That is what happened here. Several of the RFP's evaluation "elements" for award--for example, the adequacy of the offeror's work plan, the offeror's corporate experience with similar projects, the offeror's quality assurance measures, and the offeror's ability to acquire necessary supplies, vehicles and equipment--are traditional responsibility factors. See FAR § 9.104-1, "General [responsibility] standards." Since the agency based its determination of proposal acceptability on this small business set-aside against these criteria on a pass/fail basis, to the extent the agency found a proposal unacceptable under one of these criteria, the agency actually determined that a small business vendor was nonresponsible. Because Docusort's proposal was rejected solely as a result of its failure to meet one element of the personnel qualifications criterion, the determination that Docusort was technically unacceptable

⁴(...continued)

"[i]f a small business concern's offer that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the [SBA], which will decide whether or not to issue a [COC]."

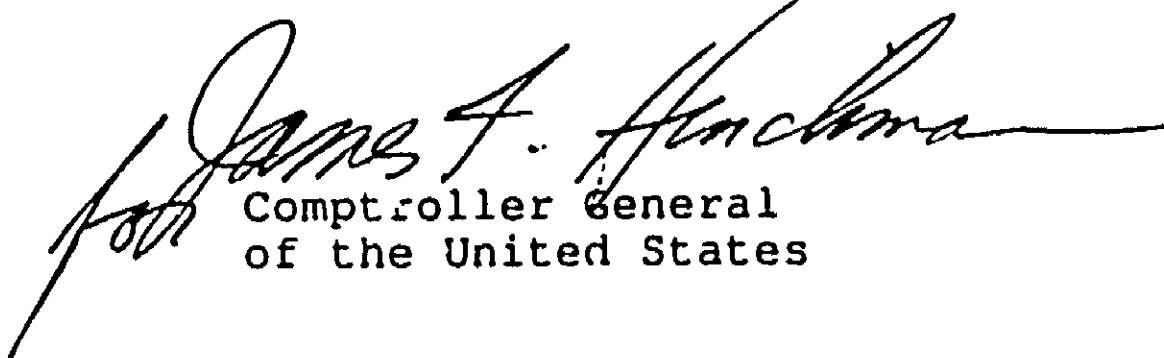
FAR Subpart 19.6 similarly sets forth the steps an agency must follow in referring a small business concern's offer to the SBA for COC review.

was, in effect, a determination by the contracting officer that Docusort was not a responsible contractor. Consequently, the rejection of Docusort's proposal without a referral to the SBA for complete consideration under COC procedures was improper. Clegg Indus., Inc., supra.

CONCLUSION

We recommend that the agency include Docusort's proposal in the competitive range, and permit the firm to submit a price proposal. If Docusort is found to be in line for award but for this matter, the issue should be referred to the SBA for a final determination under its COC procedures. We find Docusort entitled to recover the costs incurred in pursuing this protest issue, including attorneys' fees, 4 C.F.R. § 21.6(d) (1993). The protester should submit its certified claim for protest costs directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is denied in part and sustained in part.


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