

Williams



Comptroller General
of the United States

105598

Washington, D.C. 20548

Decision

Matter of: Mobility Systems and Equipment Company

File: B-261072

Date: August 8, 1995

George J. Adams for the protester.
John Donaldson, Esq., Department of Transportation, for the agency.
Paula A. Williams, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly excluded proposal from the competitive range after initial evaluation is denied where the record shows that the agency reasonably determined that protester had no reasonable chance of receiving award because the significant weaknesses in the proposal could not be remedied without major revisions and additions to make it acceptable.

DECISION

Mobility Systems and Equipment Company (MSE) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DTNH22-95-R-01000, issued by the Department of Transportation, National Highway Traffic Safety Administration (NHTSA), for vehicle testing services. MSE argues that the agency improperly and unfairly evaluated its technical proposal.

We deny the protest.

The RFP sought proposals to provide qualified personnel, facilities, services and materials to perform inspection, compliance testing, and reporting services to ensure the compliance of tested vehicles with the performance requirements of certain federal motor vehicle safety standards. The RFP provided for the award of a contract or

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contracts on a fixed-price basis for a base year and 4 option years. The acceptability of technical proposals was to be determined in accordance with seven evaluation factors:

1. Quality Assurance/Quality Control (QA/QC) [25 percent]¹
2. Procedures for recording test data [15 percent]
3. Facilities and equipment [15 percent]
4. Test scheduling [15 percent]
5. Personnel qualifications [15 percent]
6. Testing experience [10 percent]
7. Testing capability [5 percent]

The RFP provided detailed proposal preparation instructions keyed to each of the evaluation factors. For example, for the most important evaluation factor, QA/QC, offerors were required to furnish a detailed QA program plan which would serve as a qualitative statement of the offeror's capability and commitment to conduct a viable QA program; identify the critical measurements to be performed; and discuss in detail the various QA/QC activities to be conducted. Also, under this factor, offerors were to submit a detailed QA project plan which had been in effect since the last test program was completed and were to explain and provide documentation to illustrate how the project plan is being used and describe the background and experience of proposed personnel in performing QA/QC procedures and functions.

The agency received proposals from a number of offerors, including the protester.² Each proposal was evaluated and scored by a technical evaluation committee (TEC) under the evaluation plan announced in the RFP. Based on the initial evaluation, the TEC awarded MSE's technical proposal a consensus score of 73.8 points (out of a maximum weighted score of 500 points), which was substantially lower than the other proposals received. As discussed more fully below,

¹Although the RFP stated that the factors were listed in descending order of importance, it also indicated that factor 1 was of the greatest importance, factors 2, 3, 4 and 5 were of equal value, factor 6 was worth 66 percent of factor 5, and factor 7 was worth 50 percent of factor 6. The actual percentage weights for each technical factor were set forth in the agency's evaluation plan and were not disclosed in the RFP.

²Because the competition for this requirement is still proceeding, the agency has asked this Office not to release certain source selection sensitive information, such as how many proposals were received and the technical scores assigned to these proposals. Consequently, our discussion is necessarily general.

the TEC concluded that MSE's proposal had significant weaknesses in all technical areas, particularly with respect to its QA/QC plan; its procedures for recording test data; its facilities and equipment for conducting the required testing services; and the qualifications of its proposed personnel, which rendered the firm's proposal technically unacceptable. As a result, the TEC recommended that the contracting officer exclude MSE's proposal from the competitive range as technically unacceptable. On the basis of this finding, the contracting officer eliminated MSE's proposal from the competitive range.

In a letter to MSE advising the firm of this determination, the contracting officer provided a summary of the major identified weaknesses in six technical areas and also indicated that a revision of MSE's proposal would not be accepted. In a letter to the contracting officer, MSE questioned the specified weaknesses, arguing that they were either improperly identified by the evaluators or were issues that should have been the subject of discussions. MSE then filed this protest.

MSE, a previous and current contractor for these services, argues that the agency improperly eliminated its proposal from the competitive range because its proposal was "completely responsive" to the solicitation requirements. According to the protester, the weaknesses identified in its initial offer should not have been a basis for eliminating it from the competitive range since these matters were either nonexistent or subject to interpretation and could easily have been resolved through discussions.³

NHTSA responds that it properly eliminated MSE's proposal from the competitive range because of the nature and extent of the weaknesses identified in the proposal. In this regard, NHTSA states that MSE's proposal contained so many weaknesses in each technical area that it would have required a major rewriting before it could be considered technically acceptable.

The competitive range consists of all proposals that have a reasonable chance of being selected for award. Where a proposal would require major revisions or essentially the

³The protester also attributes any noncompliance to insufficient proposal preparation time and financial hardship caused by NHTSA's delay in the payment of invoices under other testing services contracts. To the extent MSE protests that it had insufficient time to prepare a proposal, the protest is untimely since it was filed after the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1995).

submission of a new proposal before it could be considered eligible for award, the proposal need not be included in the competitive range. See TSM Corp., B-252362.2, July 12, 1993, 93-2 CPD ¶ 13. The evaluation of proposals and resulting determination as to whether a particular offer is in the competitive range are matters within the discretion of the contracting agency since it is responsible for defining its needs and determining the best method of accommodating them. Network Sys. Solutions, Inc., B-249733, Dec. 14, 1992, 92-2 CPD ¶ 410. In reviewing an agency's evaluation and competitive range determination, we will not independently reevaluate proposals, but instead will examine the evaluation to ensure that it was reasonable and in accordance with the stated evaluation criteria. Id. In this regard, a protester's disagreement with the agency's technical judgment, without more, does not show that the agency's judgment was unreasonable. Seair Transp. Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458.

From our review of the entire record, including the protester's technical proposal, the agency's evaluation documentation, and the parties' arguments, we conclude that NHTSA reasonably eliminated MSE's proposal from the competitive range. MSE's low unacceptable rating stemmed from numerous weaknesses in each of the seven technical areas which rendered its proposal technically unacceptable and, when viewed in the aggregate, could only have been remedied through substantial revisions and additions to the proposal. We will summarize the most significant weaknesses.

First, MSE's proposal did not satisfy the RFP's most critical requirement relating to QA/QC which required offerors to submit a detailed QA program plan and project plan in order to demonstrate the offeror's commitment to existing quality control procedures. Since MSE's proposed program plan had only been formulated in January 1995 (the RFP called for a plan which had been used in the past for a similar test program), the evaluators were unable to assess the effectiveness of the plan or MSE's commitment to using the plan. Moreover, the evaluators noted that MSE's program plan was incomplete since it failed to identify all personnel assigned to QA functions or describe their experience (other than the QA manager) and did not include copies of several documents on which the proposal indicated that the program plan was based. Additionally, in direct contravention of the solicitation's instructions, MSE's proposal did not include a project plan for any of the standards for which it had submitted an offer. To rebut these findings, the protester simply states that it had elected to submit a "general" program plan which had previously been tried and tested. Using this "general" program plan, the protester asserts that, while performing

the contract, it would be able to prepare specific project plans as required, and that it would have been prohibitively expensive for the firm to prepare project plans in advance of contract award. By ignoring the RFP's specific instructions to provide a detailed QA program plan and project plan and to identify all the members of its QA team, the protester assumed the risk that the TEC would not find sufficient detail in its proposal to adequately evaluate the protester's capability and commitment to conduct the required testing services. See A. G. Crook Co., B-255230, Feb. 16, 1994, 94-1 CPD ¶ 118. Thus, notwithstanding the reason for this deficiency, MSE's proposal clearly was noncompliant with the solicitation's most important technical requirements.

Another significant proposal weakness was the firm's response under the test scheduling evaluation factor. The evaluators noted that MSE only provided documentation for one prior test program rather than documentation for the last three test programs, as required by the RFP, that the documentation did not contain actual performance dates or a point of contact, and that when contacted, the company for whom MSE performed the work did not recall details of the work performed. Additionally, while MSE identified past scheduling problems which were related to electronic, photographic, and publication problems, the evaluators were unable to ascertain if and how MSE made use of additional electronic equipment to solve the problem since equipment lists were not included in MSE's proposal. Nor could they verify that a second photographer was hired, as represented, because MSE did not include this individual on its personnel lists. In addition, although MSE stated that it would consolidate its laboratory into one facility so as to improve the report preparation and review process, MSE did not identify the engineers and technicians who would perform the majority of the work nor describe with any specificity its ability to accomplish the additional work required by this solicitation. Again, while the protester disagrees with the TEC's assessment under this evaluation factor, it has failed to point to any evidence to show that the TEC's findings were unreasonable.

With regard to the testing experience factor, the evaluators examined the number and type of contracts performed within the past 3 years. Contrary to the RFP requirement, MSE did not submit a list of government contracts for the last 3 years. Consequently, the evaluators contacted five contracting personnel at NHTSA concerning past performance. Four of the five individuals contacted gave MSE unfavorable contract performance ratings in all phases of the requirements--pretest, test, and reports. Although MSE maintains that the "current unsatisfactory opinions" should not outweigh its prior satisfactory performance for NHTSA

within the past 20 years, the solicitation informed offerors that poor performance reports from other government contracts would result in an unsatisfactory rating.

In light of these and the other weaknesses identified by the TEC, and despite MSE's position that it should have been given an opportunity to clarify its proposal, we conclude that the agency reasonably determined that MSE's proposal as submitted was technically unacceptable, and the number of significant weaknesses identified warranted exclusion of the proposal from the competitive range. MSE was advised by the RFP to submit an acceptable initial proposal and no matter how capable an offeror may be, it cannot reasonably expect its proposal to be in the competitive range if it does not submit an adequately written proposal. Ensign-Bickford Co., B-211790, Apr. 18, 1984, 84-1 CPD ¶ 439.

Finally, MSE maintains that the TEC's evaluation of its proposal and the decision to exclude its proposal from further consideration were the result of bias on the part of NHTSA contracting officials. Where a protester alleges bias on the part of procurement officials, the record must contain convincing proof that the officials acted with intent to harm the protester, since contracting officials are presumed to act in good faith. Advanced Sys. Technology, Inc.; Eng'g and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. The protester has provided no evidence of bias on the part of the TEC or any NHTSA contracting official, and our review of the individual score sheets shows that all evaluators unanimously considered the weaknesses in MSE's proposal to warrant rejection of the proposal as unacceptable. Accordingly, we find no evidence of bias in the evaluation.

The protest is denied.

Christine S. Melody
for Robert P. Murphy
General Counsel