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**United States Government Accountability Office
Washington, DC 20548**

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The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: F&S Environmental, LLC

File: B-405232; B-405232.2; B-405232.3

Date: September 22, 2011

James J. McCullough, Esq., and Brian M. Stanford, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.

Mike McCabe, Esq., and Joshua Stanton, Esq., Department of Homeland Security, Federal Emergency Management Agency, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal to provide support services for temporary housing units is denied where solicitation required offerors to assemble staff and resources to perform the required services within 48 hours after contract award, and the agency reasonably concluded that protester's proposal contemplated contract performance phase-in to occur 72 hours or more after award.

DECISION

F&S Environmental, LLC, of East Brewton, Alabama, protests the exclusion of its proposal from the competitive range, and the subsequent award of a contract to JESCO Company, of Gulf Shores, Alabama, by the Department of Homeland Security, Federal Emergency Management Agency (FEMA) under request for proposals (RFP) No. HSFE04-11-R-2045 to provide maintenance and other support services for FEMA's temporary housing units (THU) being used by persons displaced by severe weather in Alabama on April 28, 2011. F&S argues that its proposal was unreasonably evaluated, was improperly excluded from the competitive range, and that the contract award was improperly made to an ineligible firm.

We deny the protest.

BACKGROUND

FEMA issued the RFP on June 16, 2011 as a commercial item solicitation, seeking proposals to perform maintenance and other support services for approximately

189 THUs. Contracting Officer's Statement at 2. The RFP was issued as both a Stafford Act¹ set-aside for firms in Alabama, and a set-aside for participants in the Small Business Administration's 8(a) program. RFP at 28. The RFP provided for a performance period of 1 year from the date of award.² RFP at 4; Statement of Work (SOW) at C-4.

The RFP provided that award would be made to the firm offering the best value, considering price and four non-price factors: phase-in plan, quality control plan, past performance, and company experience. RFP at 55. The RFP also specified page limits for the responses to each non-price factor: a 5-page phase-in plan, a 15-page quality control plan, a 10-page past performance section, and a 5-page company experience section. RFP at 52-54.

With regard to phase-in plans, offerors were directed to address the steps they would take to begin contract performance. In this regard, the RFP directed that "[t]he phase-in plan shall include a timeline with dates and key tasks" as well as "what steps will be taken during that time to achieve phase-in and assume regular maintenance and deactivation requirements." RFP at 52.

The RFP also included a statement of work (SOW) establishing specific performance requirements. As relevant to this protest, under the topic of general management and administration, the SOW imposed a 48-hour readiness requirement, stating:

The contractor shall have a total of 48 hours after award to assemble staff and resources as needed to perform work within this SOW.

SOW at C-5 (¶ C.1.5).

On or before the solicitation closing date, FEMA received five proposals, including one from F&S. F&S's proposal included a phase-in plan that was divided into two sections: project mobilization, and project alignment. Regarding the first section, F&S stated that project mobilization included steps and processes "that will be initiated and/or completed within the 72 hour run up to the FEMA hosted 'Kickoff

¹ A provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5150, permits an agency to use a geographic set aside, to award certain disaster relief contracts to firms residing or primarily doing business in the disaster area. See, e.g., Executive Protective Sec. Serv., Inc., B-299954.3, Oct. 22, 2007, 2007 CPD ¶ 190 at 3.

² The RFP provided that the contract performance period could be extended to 24 months. RFP at 28.

Meeting.” F&S Technical Proposal, Phase-In Plan, at 2.³ The proposal explained that F&S had “taken proactive steps to ensure appropriate personnel will be in place within hours of a notice of award by FEMA,” and that along with personnel already in particular cities, the firm had “additional personnel, materials and equipment ‘On-Call’ and ready to depart within twenty-four hours of award notification.” Id. However, the plan also stated that F&S’s project mobilization would include holding internal meetings; setting personnel requirements; hiring or subcontracting for workers; establishing a training schedule; inventorying and distributing material, supplies, and equipment; activating a call center; and preparing for the “Kick-Off Meeting.” Id. at 2-3. Finally, the proposal provided that, at the “Kick-Off Meeting,” F&S would lay out a mission work plan for review and discussion with FEMA. Id. at 6.

For the second phase of its phase-in plan (“project alignment”), F&S explained that in the 30 days after award, the firm would, among other things, hold meetings with its staff, schedule the transfer of functions to F&S control, create new geographic service zones, and assign technicians to cover units in those new zones. Id. at 6.

In evaluating F&S’s proposal, the agency evaluators criticized F&S’s phase-in plan for failing to adequately discuss the solicitation requirements for THU maintenance and deactivation. More specifically, with respect to the 48-hour readiness requirement, the evaluators concluded that F&S’s proposal only committed to “initiate[] and/or complete[]” its project mobilization 72 hours prior to a “Kickoff Meeting.” However, the solicitation did not have any provision for a “Kickoff Meeting.” Accordingly, the evaluators concluded that F&S’s proposal did not offer to meet the 48-hour readiness requirement, which the evaluators characterized as “critical to the [RFP] and to the success of the FEMA Mission,” and an “essential and critical element” of contract performance. AR, Tab E, Evaluation Report, at 1. On this record, the evaluators found F&S’s phase-in plan to be unsatisfactory, and therefore rated its proposal technically unacceptable. Id.

The contracting officer reviewed the evaluators’ conclusions, and then independently reviewed F&S’s phase-in proposal. Based on that review, she agreed with the evaluators that F&S’s proposal was unacceptable. In particular, the contracting officer concluded that the proposal failed to show that F&S was committed to meeting the 48-hour readiness requirement. In this regard, she noted that F&S had scheduled phase-in tasks based on the timing of a “Kick-off Meeting”--even though FEMA had not provided for such an event. Contracting Officer’s Statement at 4.

The contracting officer then excluded the proposals submitted by F&S and one other offeror from the competitive range. The three remaining offerors were rated

³ In contrast, the project alignment steps would “be fully executed within 30 days of the contract award.” Id.

technically acceptable and included in the competitive range. Contracting Officer's Statement at 3. On June 17, FEMA notified F&S of the exclusion of its proposal from further consideration. F&S then sought and received a debriefing. On June 22, F&S filed its initial protest, followed by two supplemental protests on July 8 and July 29.

DISCUSSION

F&S argues that its proposal was acceptable, and therefore should have been included in the competitive range. In particular, F&S argues that its proposal complied with the 48-hour readiness requirement, and that in any event it was improper for FEMA to exclude F&S's proposal from the competitive range without considering its price. Protest at 10-13. In two supplemental protests, F&S challenges the geographic eligibility of the awardee, JESCO Company, Supplemental Protest at 6-13,⁴ argues that FEMA ignored favorable past performance of F&S, and argues that F&S was treated unfairly compared to other offerors. Comments & Second Supplemental Protest at 17-23.

As explained below, we conclude that FEMA reasonably rated F&S's proposal unacceptable based on its failure to comply with the 48-hour readiness requirement. We therefore conclude that FEMA reasonably rejected F&S's proposal, rendering F&S's remaining arguments regarding its evaluation, and the agency's ultimate award, immaterial.

F&S first argues that its proposal met the 48-hour readiness requirement. F&S points out that its proposal expressly mentioned the availability of "qualified personnel" in five Alabama locales, and "additional personnel . . . 'On-Call' and ready to depart within [24] hours of award notification." Comments & Second Supplemental Protest at 11. F&S argues that the FEMA evaluators ignored or misinterpreted these statements in its proposal, id. at 11-12, while improperly focusing on the elements of the phase-in plan that reflected longer timelines. Id. at 13.

FEMA does not dispute that F&S's proposal mentioned personnel in position or ready to depart within 24 hours. Nevertheless FEMA argues that F&S's proposal did not place the phase-in tasks in a clear time-frame or otherwise provide that F&S was prepared to begin performing contract maintenance services within 48 hours after award. AR at 8-9. Rather, FEMA argues that F&S's phase-in plan focused on the firm's internal planning for performance, which included determining personnel requirements and hiring or subcontracting, all of which were keyed to a

⁴ Although this protest was filed to challenge the exclusion of F&S from the competitive range, on June 30, FEMA notified our Office and the protester that the agency had overridden the statutory stay and awarded a contract.

FEMA-hosted kick-off meeting--that the agency describes as “nonexistent.” AR at 9. Ultimately FEMA argues that F&S’s proposal failed to provide any clear commitment to provide the required maintenance activities throughout the contract performance period--particularly by beginning such services within 48 hours of award. Id. FEMA also notes that F&S’s proposal lacked a timeline with key dates (requested by the RFP), which could have shown when F&S intended to begin performing THU maintenance. Id. at 14-15. Accordingly, FEMA maintains that its evaluation was reasonable and that it properly rated F&S’s proposal as technically unacceptable.⁵ AR at 16.

We find FEMA’s position reasonable. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information to clearly demonstrate compliance with the solicitation requirements, to allow a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. In this regard, an offeror must affirmatively demonstrate the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

The phase-in plan submitted by F&S, as described above, identifies two periods--the earlier of which, “project mobilization,” was described as taking place in a 72-hour period measured from a kick-off meeting that the agency had not committed to conduct. The tasks related to this “project mobilization” phase were described as providing plans and making decisions for performance (including hiring and subcontracting) that were internal to F&S. Additionally, the second “project alignment” period in the first 30 days involved F&S meeting with its staff, transferring functions to itself, and assigning technicians to newly created service zones. We agree with FEMA that F&S’s proposal did not provide any clear statement that the firm would meet the 48-hour readiness requirement; rather, the phase-in plan suggested that F&S would take significantly longer than 48 hours after award to have staff in place to begin actual performance of the required maintenance services. Based on this record, FEMA’s rating of F&S’s proposal as unacceptable was reasonable.

F&S next argues that it was nevertheless improper for FEMA to exclude the firm’s proposal from the competitive range without considering its price. To the contrary, an agency need not consider an offeror’s price when establishing a competitive range where, as here, the proposal is technically unacceptable. TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 4.⁶

⁵ Based on its determination that F&S’s proposal was technically unacceptable, FEMA states that it did not consider F&S’s price. AR at 7.

⁶ F&S argues similarly in a supplemental protest that FEMA ignored positive past performance known to the agency. Even if we were to accept F&S’s assertion,
(continued...)

Finally, although F&S challenges the eligibility of JESCO under the terms of the solicitation, F&S is not an interested party to raise that challenge. Specifically, F&S is not an interested party to challenge the qualifications of the awardee since, as explained above, F&S's proposal was reasonably rejected as technically unacceptable, and at least one other acceptable offeror remained in the competitive range, and is therefore in line for award ahead of F&S. TSM Corp., B-252362, B-252362.2, July 12, 1993, 93-2 CPD ¶ 13 at 8 (protester was properly excluded from the competitive range, and thus was not an interested party to challenge the agency's subsequent actions with respect to multiple offerors in the competitive range).⁷

In summary, FEMA reasonably evaluated F&S's proposal as unacceptable based on the firm's failure to meet the 48-hour readiness requirements specified in the SOW. Accordingly, FEMA properly excluded F&S's proposal from the competitive range.

The protest is denied.

Lynn H. Gibson
General Counsel

(...continued)

which we do not, F&S has failed to establish competitive prejudice, since its proposal was reasonably found to be technically unacceptable.

⁷ F&S also argues that its proposal was treated unequally with regard to the other offerors, asserting that at least two of the three proposals in the competitive range also failed to clearly commit to meeting the 48-hour readiness requirement. Supplemental Comments at 11-13. However, F&S acknowledges that at least one of these offerors made a specific commitment to "mobilize its teams within 48 hours to begin evaluations and making contact with THU residents." Id. at 11. Since F&S has not shown that its proposal made an equivalent commitment, F&S has not provided a basis in the record for its claim of unequal treatment.