



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

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Decision

Matter of: Omran Holding Group

File: B-409769

Date: May 28, 2014

R. Dale Holmes, Esq., and Robert G. Ruggieri, Esq., Cohen Seglias Pallas Greenhall & Furman PC, for the protester.

David F. Innis, Esq., Department of the Army, Corps of Engineers, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal as unacceptable is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's terms.

DECISION

Omran Holding Group, of Kabul, Afghanistan, protests the award of a contract to [DELETED¹], of Herat, Afghanistan (doing business as [DELETED]), by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912DQ-14-R-4013 (also identified as RFP No. W5J9JE-14-R-4014) for design-bid-build construction services to complete construction of facilities for the Afghan National Army 1st Commando Kandak, at the Gamberi Garrison in Laghman province, Afghanistan. Omran argues that the Corps misevaluated the firm's proposal as unacceptable.

We deny the protest.

¹ The name of the awardee has been redacted from the public version of our decision at the request of the Department of the Army, which states that it has both a general policy against disclosure of the identity of local contractors (see United States Central Command Joint Theater Support Contracting Command Acquisition Instruction (Aug. 6, 2013), at 16), and a specific concern about security at this construction site. Letter from Counsel for the Corps to GAO, June 9, 2014, at 1-2.

The Corps issued the RFP on February 10, 2014, seeking proposals for a single fixed-price design-bid-build construction contract to complete construction of the 1st Commando Kandak, after the original task order for the project was terminated for default at 60.86 percent completion. Agency Report (AR) Tab 13p, Source Selection Decision, at 1.

Award was to be made to the firm whose proposal was evaluated as the lowest-priced, technically acceptable proposal. RFP at 10. The solicitation stated that the government did not intend to enter into discussions, but reserved the right to do so. Id. The RFP provided for evaluation of technical acceptability under three evaluation factors: similar work experience, construction methodology, and self-performance. Id. at 2-3. Under the construction methodology factor, offerors were directed to submit a narrative explaining the offeror's approach to completing the project, and a summary-level schedule. With respect to the content of the narrative, the RFP required offerors to describe their planned approach for completing the project, to demonstrate a thorough understanding of the requirements in the scope of work, and, as relevant here:

The narrative must also address the capability and flexibility to plan and schedule the complete project to meet the proposed periods of performance, and identify any constraints on the schedules presented (i.e. labor or material availability, multiple work crews, holidays, weather, etc.).

RFP amend. 4, at 9.

The Corps received four proposals in response to the solicitation. AR Tab 11p, Source Selection Decision, at 4. The evaluation concluded that each of the three lowest-priced proposals was unacceptable, including Omran's proposal, which offered a total price of \$8 million. Although the firm's proposal was rated acceptable under both the similar work experience and self-performance factors, it was rated unacceptable under the construction methodology factor. While the evaluators found Omran's construction methodology to be comprehensive, logical, and thorough, they assessed a deficiency because the proposal "did not provide any information concerning constraints for materials and labor, and holidays and weather as required [in the RFP]." Id. at 11.

On April 16, the contracting officer prepared a source selection decision in which he reviewed the evaluation and concluded that **[DELETED]** had submitted the only acceptable proposal, albeit at the highest price. Id. at 13-14. He also determined that discussions should not be conducted. He explained that the project--considered time-critical due to the planned troop drawdown--was several years behind schedule. Id. He deemed each of the three unacceptable proposals (including Omran's) to have significant deficiencies that reflected a failure to understand the

requirement. Id. at 13. Accordingly, the contracting officer decided to award the contract to **[DELETED]** at an evaluated price of \$12 million. Id. at 14.

ANALYSIS

Omran argues that its lower-priced proposal should have been rated acceptable. In particular, Omran argues that its proposed approach faced no constraints due to materials, labor, holidays, or weather, and therefore it was unreasonable for the Corps to rate the proposal unacceptable. Protest at 4-7. Omran argues that if the RFP had specifically advised the firm of the need to expressly state that its approach did not face each of the listed constraints, it would have done so. Protest at 6-7.

The Corps argues that its evaluators reasonably followed the terms of the RFP, which expressly required the proposal to include a narrative that

must also address the capability and flexibility to plan and schedule the complete project to meet the proposed periods of performance, and identify any constraints on the schedules presented (i.e. labor or material availability, multiple work crews, holidays, weather, etc.).

RFP amend. 4, at 9. Upon reviewing Omran's proposal and finding that it did not address constraints, the evaluators assessed a deficiency and rated the proposal unacceptable.

The Corps explains that performance of the work in Afghanistan involves well-recognized difficulties imposed by limited access to material, labor, and other difficulties posed by holidays and extreme weather. AR at 3. The contracting officer has provided a reasonable basis for each area of concern that was identified by the evaluators--some of whom had visited or been deployed to Afghanistan, and who had overseen hundreds of construction projects there. Contracting Officer's Statement at 3. For example, labor availability for this project will be constrained by local shortages, and further limited by pre-screening requirements. Id. at 4. Material availability is constrained by the limited supply of some building materials, resulting in complications of importing needed materials in order to maintain a schedule. Id. at 5. Multiple holidays that are observed in the area where the work was to be performed were also expected to have an impact on this project, including the need for a reduced pace during Ramadan. In addition, the agency explained that the weather could pose an added constraint because of the need to close in the construction before colder weather arrives in late Autumn. Id. The contracting officer states that by failing to address any of the listed constraints (or explain how they would be avoided), Omran's proposal failed to show a clear understanding of the difficulty of meeting the Corps's requirements related to this project, which has already been halted once by the prior contractor's termination. Thus, the Corps contends that Omran's proposal was properly rated unacceptable. Id. at 6.

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme and procurement statutes and regulations, and adequately documented. Triad Logistics Servs. Corp., B-407842.2, Apr. 22, 2013, 2013 CPD ¶ 106 at 3. We have no basis to find the Corps's evaluation unreasonable.

Our review shows that the RFP clearly required each offeror's narrative to address its capability and flexibility to plan and schedule this project. As part of this explanation, offerors were expressly required to identify any constraints on their schedules. In addition, Omran concedes that its proposal did not address this latter requirement (and states that, if it had, the response would have been that no constraints existed). Despite the arguments that Omran makes now, its proposal did not state that no constraints existed, and did not explain why that might be the case. Even if the pleadings now explain why Omran believes no constraints apply, explanatory information provided in its protest submissions cannot cure an inadequately written proposal. See, e.g., HealthStar VA, PLLC, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 6 n.3. In the absence of any language in the proposal addressing this required aspect of the narrative, the Corps was left to conclude, as it did, that Omran did not understand the requirement.

It is an offeror's responsibility to submit a proposal that responds to, and demonstrates a clear understanding of, the solicitation requirements; where a proposal fails to do so, the offeror runs the risk that the procuring agency will evaluate its proposal unfavorably. See, e.g., United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150 at 3. The record shows that Omran did not provide information in its proposal that a reasonable offeror would understand was required. Omran has given us no basis to question the agency's conclusion that its proposal was deficient based on this informational omission and, therefore, unacceptable. The firm's contentions that other portions of its proposal are sufficient to make up for this omission are not persuasive.

The protest is denied.²

Susan A. Poling
General Counsel

² Omran argues that the Corps effectively conducted an improper sole-source procurement because only one proposal was rated acceptable. This fact does not constitute a sole-source procurement. The cases cited by Omran concern establishment of a competitive range of one offeror, whereas (as Omran itself notes) the contracting officer here expressly determined not to establish a competitive range or hold discussions. See Protester's Comments at 1.