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Decision

Matter of: Dellew Corporation

File: B-410216

Date: November 13, 2014

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DIGEST

Protest challenging the agency's rejection of proposal as technically unacceptable is denied where the agency's determination that the protester's proposed staffing/labor mix was inadequate to ensure successful performance of the contract requirements was reasonable and consistent with the solicitation.

DECISION

Dellew Corporation, of Kapolei, Hawaii, protests the issuance of a task order to Accent Controls, Inc., of Riverside, Missouri, pursuant to request for proposals (RFP) No. W52P1J-13-R-0178, issued by the Department of the Army, U.S. Army Materiel Command, for logistical support services for the Detroit Arsenal Logistics Readiness Center in Warren, Michigan. Dellew challenges the agency's determination that its proposal was technically unacceptable.

We deny the protest.

BACKGROUND

The Army issued the solicitation on October 21, 2013, to small business contractors holding basic ordering agreements under the Army's Enhanced Army Global Logistics Enterprise (EAGLE) Program. RFP at 2. The RFP contemplated the issuance of a combination cost-plus-fixed-fee and fixed-price task order with a 30-day transition-in period, 11-month base period, and four 1-year option periods.

Id. The purpose of the order was to provide a variety of logistical support services at the Detroit Arsenal. Id.

The RFP provided for award on a lowest-price, technically-acceptable basis. RFP amend. 13, at 15. Pursuant to the RFP, the agency would assign an acceptable rating to a proposal that demonstrated an understanding of the performance work statement (PWS) requirements and provided an otherwise acceptable proposal based on the Army's evaluation of the following three technical elements: mission capability narrative, mission essential contractor services, and staffing. Id. at 16. An unacceptable rating would be assigned if the proposal did "not clearly meet the minimum requirements of the solicitation." Id. The RFP advised that offers receiving an unacceptable technical rating would not be considered for award. Id.

The RFP's PWS described the specific efforts required under the contract in three general performance areas: material maintenance, supply services, and transportation. PWS § 1.2.1. The material maintenance segment of the PWS encompassed tasks such as maintenance of tactical and commercial equipment and moving office furniture at the arsenal. Id. §§ 5.3.1, 5.4.1. It also included various locksmith-related functions, such as maintenance of classified safes and containers with various locking mechanisms. Id. § 5.5.1. Under the supply services aspect of the PWS, the contractor would be responsible for picking up and delivering property, including computer equipment and furniture, as well as transporting hazardous material (HAZMAT) and waste at the arsenal. Id. §§ 5.14.2, 5.16. Under the transportation segment, the PWS contemplated the operation of a motor pool, which included dispatch and control of a fleet of government vehicles and a testing and licensing program, among other tasks. Id. § 5.27.

The RFP also included a technical exhibit (TE 1) that outlined the PWS requirements for each functional area. See AR, Tab 8d, Revised TE 1 M-S-T-001 Minimum Productive Hours, at 1-2. For each PWS requirement, the TE 1 identified the projected number of transactions related to the requirement over a 1-year period, as well as the "minimum productive hours" necessary to complete each requirement. Id. As an example, the TE 1 workload data contemplated 3,500 transactions related to the pick-up of excess hazardous waste from customers, which required 2,349 minimum productive hours. Id. at 1.

As relevant here, under the staffing element, the RFP instructed offerors to submit with their proposals a spreadsheet--included as an attachment to the RFP--outlining the firm's staffing/labor mix. RFP at 50; id., attach. 2, Staffing Labor Mix, at 1-3. In the submission, offerors were to identify their proposed labor categories and staffing levels based on the PWS requirements and workload data included in TE 1. RFP at 50. The RFP advised that offerors' "proposed staffing must provide support for all required functions for this effort." Id. Additionally, full time equivalent (FTE) productive hours proposed were to "meet or exceed the minimum productive hours

provided in the attached workload data.” Id.; see also AR, Tab 8d, Revised TE 1 M-S-T-001 Minimum Productive Hours, at 1 (advising that proposals “must meet or exceed the minimum productive hours”). According to the solicitation, the purpose of the staffing/labor mix spreadsheet was to “provide the Government with a picture of each offeror’s staffing and total proposed labor hours for each work center/shop.” RFP at 50; see AR at 3.

Pursuant to the RFP, the Army would evaluate proposals under the staffing element by reviewing the offeror’s proposed labor categories and staffing levels to determine if the proposed staffing is “feasible” in relation to the PWS, the workload data, and an independent government estimate for the work. RFP amend. 13, at 17. The RFP advised that the agency would evaluate whether the “[p]roposed approach presents a labor mix . . . which ensures successful performance of all PWS requirements.” Id. In addition, the agency would consider whether the “[p]roposed approach is in compliance with minimum staffing levels (total productive hours) to meet or exceed hours indicated within the workload data; and has accounted for and proposed all required functions to successfully perform the PWS requirements.”¹ Id. The solicitation further advised that “[p]roposals that do not meet or exceed the minimum productive hours will not be further evaluated or considered for award.” Id.

The Army received offers from 22 firms, including Dellew and Accent Controls, prior to the close of the solicitation. AR at 2. After receipt of initial proposals, the Army amended the PWS and the minimum productive hours in TE 1, and directed offerors to submit revised proposals. Id.; see RFP amend. 11, at 2. A technical evaluation team (TET) evaluated the acceptability of each offeror’s technical approach, including their staffing/labor mix. AR, Tab 13, Technical Executive Summary, at 1. Consistent with the solicitation, the TET compared each offeror’s staffing against the minimum staffing levels identified in the TE 1 workload data. Id. at 3.

With respect to Dellew’s proposal, the TET rated it acceptable under the first two technical elements, mission capability narrative and mission essential contractor services. AR, Tab 14c, Technical Evaluation Report, at 1. Under the staffing element, however, the TET rated Dellew’s proposal unacceptable. Id. at 4. In reaching this conclusion, the TET noted that Dellew had “not accounted for and proposed all required functions to successfully perform the PWS requirements.” Id. at 6.

¹ The solicitation explained that in evaluating offerors’ proposed staffing, the agency would convert proposed FTEs to “productive hours” and multiply the number of proposed FTEs by the number of productive hours. RFP amend. 13, at 17. Productive hours are the net hours that an employee would work, taking into consideration such variables as sick leave and vacation time. AR at 4 n.1.

The TET highlighted four areas of Dellew's staffing/labor mix that were deficient. Id. at 4-6. First, under the material maintenance functional area, the TET noted that Dellew had not proposed a locksmith in its staffing/labor mix. Id. at 4.; see AR, Tab 10a, Dellew Staffing/Labor Mix Spreadsheet, at 1. According to the TET, locksmith duties were identified in the agency's TE 1 workload data and necessary to complete certain material maintenance PWS tasks. AR, Tab 14c, Technical Evaluation Report, at 4; see PWS § 5.5.1.

Next, the TET determined that Dellew's staffing/labor mix failed to "ensure successful performance" of several supply services, including pick up of excess HAZMAT and hazardous waste, delivery of non-expendable property, and pickup/delivery and redistribution of installation property such as furniture and information technology items. AR, Tab 14c, Technical Evaluation Report, at 5. In this regard, the TE 1 workload data identified 2,349 productive hours, 2,048 productive hours, and 2,048 productive hours, respectively, as the minimum productive hours for these installation supply services. Id.; AR, Tab 8d, Revised TE 1 M-S-T-001 Minimum Productive Hours, at 1. The TET noted that the 701.7 productive hours (0.37 FTEs) that Dellew proposed under the medium truck driver labor category--the labor category the TET identified as qualified to perform these tasks--was insufficient to perform the tasks. AR, Tab 14c, Technical Evaluation Report, at 5; see AR, Tab 10a, Dellew Staffing/Labor Mix Spreadsheet, at 1.

The TET also noted that the TE 1 workload data identified a minimum of 1,425 productive hours under the transportation segment of the PWS to "issue, authenticate, renew and suspend/revoke licenses." AR, Tab 14c, Technical Evaluation Report, at 4; Tab 8d, Revised TE 1 M-S-T-001 Minimum Productive Hours, at 1; see PWS § 5.27.3. The TET identified a deficiency in Dellew's staffing/labor mix because the firm proposed only 701.7 productive hours (0.37 FTEs) under the "Test Proctor" labor category to perform these PWS tasks, "but did not propose any additional labor categories or alternate solution to meeting the 1,425 requirement." AR, Tab 14c, Technical Evaluation Report, at 4, 5; see AR, Tab 10a, Dellew Staffing/Labor Mix Spreadsheet, at 1.

Lastly, the TET observed that Dellew's staffing/labor mix for the project management office proposed a "computer programmer I" service contract act (SCA) position to perform application database manager (ADBM) tasks. AR, Tab 14c, Technical Evaluation Report, at 5. The TET concluded that the SCA definition for the computer programmer I labor category did not fit with the PWS's ADBM requirements. Id. at 6. Consequently the TET determined that Dellew did not "adequately address" the PWS ADBM requirements and a deficiency was noted. Id.

For the reasons outlined above, the TET concluded that Dellew's staffing/labor mix was "inadequate to perform the required effort," and the evaluators assigned the proposal an unacceptable rating under the technical factor's staffing element. Id. at 7.

On June 30, 2014, the Army informed Dellew that the agency had made an award, and that its proposal was deemed technically unacceptable.² AR, Tab 14e, Notice of Technical Unacceptability, at 1. On August 1, the agency advised the protester that a new award had been made to Accent Controls for \$14,981,929.³ AR, Tab 15c, Notice of Award to Accent Controls, at 1. This protest followed.

DISCUSSION

In its protest, Dellew contends that the award to Accent Controls was improper because the agency unreasonably found Dellew's proposal technically unacceptable, and because Dellew offered a lower price than the awardee.⁴ Protest at 2. Dellew contends that contrary to the agency's determination, the firm's staffing/labor mix was sufficient because Dellew "continuously plans for varying workloads and schedule adjustments" and that it offers "cross-training and [a] flexible labor force." *Id.* at 9, 10. Dellew further asserts that it was penalized for offering an "innovative, money saving approach" to performing various aspects of the PWS. *Id.* at 5, 7. While our decision here does not specifically discuss each and every argument and/or variations of the arguments, we have considered all of the protester's assertions and find that none furnishes a basis for sustaining the protest.⁵

² Dellew did not challenge the agency's initial award because the awardee was lower-priced. Dismissal Request Response at 2.

³ The agency ultimately terminated the initial award and made the award to Accent Controls as the next lowest-priced, technically acceptable offeror. AR at 5.

⁴ We find that Dellew's protest is timely because it was not until Dellew received the agency's second award notice that the protester had a basis to protest because the award was made to a higher-priced offeror. Although Dellew's price was not evaluated by the agency (because the firm was found technically unacceptable), Dellew proposed a price of \$13,306,847.28. Protest at 2; AR at 4.

⁵ For example, Dellew asserts in its protest that the agency improperly relied on a mechanical application of its staffing estimate. Protest at 3-7. In response to the protester's allegations, the agency provided a detailed response in its agency report. Dellew's comments on the agency report, however, failed to address the agency's responses. Consequently, we consider the protester to have abandoned this argument and will not consider it further. See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 4 n.3.

We also do not consider the protester's untimely discussions argument. In this regard, Dellew argues, for the first time in its comments on the agency's report, that the agency should have conducted discussions with Dellew to clarify the firm's proposal. Comments at 8. These arguments could and should have been made in its initial protest filing. 4 C.F.R. § 21.2(a)(2) (2014) (requiring that protest issues be
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The evaluation of technical proposals is a matter within an agency's discretion since an agency is responsible for defining its needs and for identifying the best methods for accommodating those needs. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. Our Office will not reevaluate technical proposals; rather we review a challenge to an evaluation to determine whether the agency acted reasonably and in accordance with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Id. It is an offeror's responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical approach in accordance with the evaluation terms of the solicitation. Carolina Satellite Networks, LLC; Nexagen Networks, Inc., B-405558 et al., Nov. 22, 2011, 2011 CPD ¶ 257 at 4; Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6 (an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal). A protester's disagreement with the agency's judgments does not render the evaluation unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6.

Here, we find unobjectionable the agency's evaluation of Dellew's staffing/labor mix and subsequent determination that Dellew's staffing was unacceptable. As explained above, the RFP required that offerors' proposed staffing "provide support for all required functions for this effort." RFP at 50. The RFP further advised that the agency would review the offeror's staffing/labor mix spreadsheet to determine whether the proposed staffing "accounted for and proposed all required functions to successfully perform the PWS requirements." RFP amend. 13, at 17. The record shows that the TET reviewed Dellew's staffing/labor mix and, in accordance with the solicitation, evaluated it to determine if the proposed staffing was "feasible" in relation to the PWS requirements, the provided workload data, and the government estimate. See AR, Tab 14c, Technical Evaluation Report, at 4; RFP amend. 13, at 17.

As outlined above, the TET documented four areas of Dellew's staffing/labor mix where it determined that Dellew did not provide an "acceptable labor mix or account for and propose all required functions." AR, Tab 14c, Technical Evaluation Report, at 4-7. We have reviewed the record and find reasonable the TET's determinations. For example, with respect to the locksmith-related tasks that the TET concluded Dellew had not accounted for, Dellew now contends that it anticipated that its carpenter would perform both carpentry and locksmith duties. Protest at 7. However, as the agency notes, nothing in Dellew's proposal indicated the firm's

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presented within 10 days after the basis of protest is known or should have been known); see also JAVIS Automation & Eng'g, Inc., B-290434, B-290434.2, Aug. 5, 2002, 2002 CPD ¶ 140 at 7 n.11 (piecemeal presentation of protest grounds, raised for the first time in comments, are untimely).

intent to rely on the carpenter to perform the locksmith tasks. See AR at 15. Without any explanation in Dellew's proposal, we agree with the Army that there was no reason for the agency to assume that Dellew's carpenter was "qualified to handle the specialized locksmith duties" identified in the PWS. See id. at 14. Moreover, Dellew's general reference in its proposal to "[c]ross-training staff members whenever possible" does not indicate any specific intent to rely on its carpenter to perform the locksmith duties.⁶ See AR, Tab 10b, Dellew Proposal Mission Capability Narrative, at 2. In addition, the TE 1 workload data listed 1900 minimum productive hours for carpentry and another 1900 hours for locksmith-related requirements, thus indicating at least 1 FTE for each requirement. See AR, Tab 8d, Revised TE 1 M-S-T-001 Minimum Productive Hours, at 1. On this record, we have no basis to conclude that the Army misevaluated Dellew's staffing with respect to performance of the locksmith-related functions.

Likewise, the agency's conclusions regarding Dellew's insufficient staffing to perform other aspects of the PWS are also unobjectionable. With respect to the supply services that the TET concluded were unaccounted for, Dellew maintains that its warehouse specialists--not solely its medium truck drivers--would operate and manage all PWS HAZMAT and hazardous waste tasks. Protest at 9. Dellew explains that using its warehouse specialists to both manage the warehouse stock and perform pick-ups and deliveries creates "the greatest efficiencies in warehouse management." Comments at 5. However, once again the protester has not pointed to anything in its proposal to indicate its intent to cross-utilize its warehouse specialists. Moreover, as the agency explains, the SCA definition of the warehouse specialist labor category does not encompass all of the pick-up, delivery, and redistribution duties contemplated in the PWS and identified in the TE 1 workload data. See AR at 16. Indeed, Dellew does not even indicate in its protest that it intended its warehouse specialists to perform the other duties that the TET found deficient, i.e., delivery of non-expendable property and pickup/delivery and redistribution of other installation property. See AR, Tab 14c, Technical Evaluation Report, at 5. Thus, without any explanation in the proposal, the agency had no basis to assume that Dellew's warehouse specialists would also perform various installation supply services such as pick up of excess HAZMAT and hazardous waste and delivery of property.

⁶ In its comments, Dellew argues that the page limits established in the solicitation provided "an insufficient amount of space to explain Dellew's staffing plan." Comments at 8 n.37. In this regard, Dellew complains that it used almost all of the 7-page limit for the mission capability element to provide its mission capability narrative. Id. To the extent that the protester had objections to the RFP's page limits, it should have protested the limits prior to the deadline for the receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (protests based upon alleged improprieties in a solicitation must be filed prior to the time set for receipt of initial proposals). Accordingly, Dellew's complaints in this regard will not be considered.

The record also shows that Dellew's proposal did not adequately explain its staffing approach with respect to the PWS requirement to issue, authenticate, renew and suspend/revoke licenses. Once again, Dellew asserts that it proposed a sufficient number of FTEs to perform all of the PWS motor pool requirements because some employees would have "more than one classification." Protest at 9. As an example, the protester explains that its medium truck driver would also provide services as a test proctor, which was the labor category the TET identified as being responsible for the licensing tasks. Comments at 6. Thus, Dellew simply argues that it met the minimum productive hours required for the motor pool operations section of the PWS. However, as outlined above, the solicitation required offerors to account for and propose for all required functions, not solely meet the minimum required hours. Without any explanation in its proposal of the firm's intention to have the truck driver perform tasks related to licensing, the agency had no basis to assume this staffing approach. Accordingly, the agency's determination that Dellew failed to propose a sufficient staffing to perform the PWS licensing functions was reasonable.⁷

Ultimately, as noted above, it is an offeror's responsibility to submit an adequately written proposal and risks an adverse evaluation for failing to do so. Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 5. The RFP here required that offerors' proposed staffing "provide support for all required functions for this effort." RFP at 50. The record confirms that the TET reasonably determined that Dellew's staffing/labor mix was "inadequate to perform the required effort." See AR, Tab 14c, Technical Evaluation Report, at 7. Without more in its proposal, Dellew's protest arguments of how the firm intended to perform various PWS tasks do not provide a basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel

⁷ We similarly find no basis to sustain Dellew's objections to the agency's findings regarding the firm's proposed computer programmer I.