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**Comptroller General
of the United States**

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

Decision

Matter of: AHNTECH, Inc.

File: B-295973

Date: May 11, 2005

Sam Ahn for the protester.

Capt. Geraldine Chanel, Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably regarded protester's approach to staffing as a weakness where proposal implied that protester intended to do most of its hiring from the incumbent workforce, but protester offered no evidence that incumbent employees could be expected to accept its offer of employment and protester failed to propose an alternative approach to hiring in the event of the unavailability of the incumbent employees.

2. Protest of technical evaluation of proposal is denied where agency offered explanation for its findings that was supported by the record, and protester failed to offer any meaningful rebuttal.

DECISION

AHNTECH, Inc. protests the rejection of its proposal and the award of a contract to MPRI under request for proposals (RFP) No. W27P4C-05-R-X1408, issued by the Department of the Army, Joint Contracting Command-Iraq, for maintenance and operation of the Army's Butler Range Complex in Iraq. Specifically, the protester takes issue with the agency's evaluation of its operations plan as a "no-go."

We deny the protest.

The solicitation, which was issued on December 13, 2004, sought a contractor to operate and maintain both the ranges and the life support area (LSA) of the range complex. The RFP contemplated the award of a fixed-price contract for a base and

2 option years to the offeror whose proposal was considered most advantageous to the government, price and other factors considered. Factors to be considered in the evaluation of proposals were relevant past performance, operations plan (technical proposal), quality control plan, and price.

The RFP instructed offerors that their operations plans should explain how they would manage and operate their services in the Iraqi theater of operations; in addition, the plans were to identify the individuals who would be working and maintaining the range and furnish information regarding their training, certifications, and experience. The solicitation provided that the plans would be evaluated to assess offerors' understanding of the solicitation's requirements and to determine whether the offeror's approach was achievable within the offeror's proposed price. The solicitation further provided that the operations plans would be evaluated on a go/no-go basis and that if a plan were rated as a no-go, the offeror's proposal would no longer be evaluated for award and would be eliminated from the competition. RFP at 43.

Three proposals were submitted in response to the RFP. The agency evaluators rated AHNTECH's operations plan as a "no-go" and eliminated the protester's proposal from the competition. MPRI's proposal was subsequently selected for award. After requesting and receiving a debriefing, AHNTECH protested to our Office.¹

At AHNTECH's debriefing, the agency cited the following weaknesses/deficiencies in the protester's operations plan:

- The protester did not demonstrate the feasibility of its proposed approach to hire 85 percent of the incumbent workforce. AHNTECH failed to furnish letters of intent signed by the employees stating that they would be willing to work for AHNTECH if it were the successful offeror.
- The plan failed to address the management and maintenance of a number of ranges identified in the solicitation.
- The plan failed to address requirements pertaining to the maintenance and upkeep of the LSA, including the requirement for operation of the area 24 hours a day, 7 days a week; the requirement that the contractor account for and maintain all U.S. government real property; and the requirement that the contractor maintain and repair facilities and equipment, including generators.
- The plan failed to identify the equipment necessary to perform LSA maintenance and the qualifications of personnel to maintain government-furnished equipment (GFE).

¹ While AHNTECH protested to our Office prior to contract award to MPRI, the agency overrode the stay on performance due to urgent and compelling circumstances and awarded a contract to MPRI on March 7.

Agency Report, Tab 21.

In its protest, AHNTECH argued that the agency's criticisms were unfounded. In its report on the protest, the agency provided a detailed response to the challenges AHNTECH raised. In its comments on the report, AHNTECH did not rebut any aspect of the agency's report, instead requesting that the protest be decided on the existing record.

In reviewing an agency's evaluation, we will not reevaluate the proposals; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation and applicable procurement laws and regulations. T.J. Lambrecht Constr., Inc., B-294425, Sept. 14, 2004, 2004 CPD ¶ 198 at 2. Here, as explained below, we have reviewed the record and we see no basis to question the agency's evaluation of AHNTECH's proposal.

With respect to the first of the agency's concerns set out above, the protester contended in its protest that it never stated that it planned to hire 85 percent of the current employees and that it was improper for the agency to find its operations plan deficient for failing to include letters of intent since the RFP did not require such letters. In support of the former assertion, AHNTECH cited the following excerpt from its proposal:

Historically, we have achieved better than 85% retention rate of incumbent work forces. For the Butler Range Complex we anticipate similar results.

AHNTECH Proposal at Part 3, p. 1.

While it is true, as the protester has asserted, that it did not directly state that it planned to hire 85 percent of the current employees, we nonetheless think that the above excerpt from AHNTECH's proposal clearly implies that the protester expected to do most of its hiring from the incumbent workforce. This inference is buttressed by the protester's failure to offer any alternative approach to hiring the requisite staff in the event that the incumbent work force proved to be unavailable. The agency evaluators determined that hiring the incumbent workforce was not a feasible approach for AHNTECH because (1) the incumbent's employees had expressed a desire to remain in the incumbent's employ (by moving to other contracts performed by the incumbent in the Iraqi theater of operations) if the incumbent were not the successful offeror under this RFP, and (2) the protester had failed to offer any evidence (such as letters of intent) that the employees intended to work for it if it were the successful offeror. Because AHNTECH in essence proposed to rely upon the incumbent workforce, but failed to offer evidence that the incumbent employees could be expected to accept its offer of employment and, in addition, failed to propose an alternative approach to hiring in the event of the unavailability of the incumbent employees, we think that it was reasonable for the agency to regard the

protester's approach to staffing as a weakness. See NCLN20, Inc., B-287692, July 25, 2001, 2001 CPD ¶ 136 at 4-5.

Next, the protester disputed the evaluators' finding that its operations plan failed to address the management and maintenance responsibilities for a number of the ranges identified in the RFP. The protester contended that the requirements were addressed in the job descriptions set forth in its operations plan for the positions of program manager, deputy program manager, operations manager, range support chief, convoy chief, and military operations in urban terrain (MOUT) chief.

The agency explained in response that it was the requirements set forth in the following RFP sections that the protester failed to address in its proposal: section 2.21 (Additional Range Support), section 2.22 (Aviation Range Operations), section 2.23 (Basic Rifle Marksmanship Range Operations), and section 2.24 ((Machine Gun Transition and Direct Fire Range Operations). The agency noted that section 2.21 required the contractor to brief units using certain specified ranges about the range's standard operating procedure (SOP) and then to inspect unit compliance with the SOP. The agency contended that none of the job descriptions referenced by AHNTECH specifically addressed the requirement for unit briefings together with follow-up compliance inspections regarding these ranges. In this connection, the agency maintained that neither AHNTECH's job description for program manager nor its job description for deputy program manager mentioned briefings; its job description for operations manager mentioned briefings, but did not tie them to any specific ranges, and failed to mention compliance inspections; its job description for range support chief mentioned briefings for unit leaders, but not for entire units, and made no reference to any of the ranges enumerated in section 2.21; and neither the convoy chief nor the MOUT chief job description provided for the briefing of units using the ranges listed in section 2.21. The agency further noted that none of the job descriptions cited by AHNTECH made any reference to the aviation range, the basic rifle marksmanship range, or the direct fire range, nor was there any reference to these ranges elsewhere in the protester's operations plan.

Our review supports the agency's description of the protester's proposal, and in the absence of any meaningful rebuttal, we have no basis upon which to find that the agency acted unreasonably in finding the protester's proposal deficient in these areas. Arctic Slope World Servs., Inc., B-284481, B-284481.2, Apr. 27, 2000, 2000 CPD ¶ 75 at 5, n. 2.

Regarding the agency's findings pertaining to the protester's approach to LSA maintenance, AHNTECH argued in its protest that it did provide for around-the-clock operation of the area and that it addressed the requirements pertaining to maintenance of the LSA in its job descriptions. The protester also argued that it identified the equipment necessary to perform all requirements of the SOW, including the LSA.

The agency responded in its report that the protester's operations plan provided for around-the-clock operation of the ranges, but not of the LSA. The agency noted in this regard that the sections of AHNTECH's proposal cited by the protester as addressing the requirement for around-the-clock operation of the LSA pertain instead to operation of the ranges. With regard to the protester's second point, the agency contended that while the job description that AHNTECH furnished for its logistics and services manager mentioned tracking GFE, it did so in a general manner only; furthermore, it made no mention of the many generators in the LSA (or any particular plan for maintaining them) or of maintaining LSA buildings. Similarly, the job description for the range support manager failed to address maintenance of the generators located in the LSA. With regard to the protester's claim that it identified all necessary equipment, the agency asserted that the contractor-furnished equipment identified by the protester in its proposal is associated with the maintenance and repair of targets and not with the maintenance of equipment or facilities in the LSA.

Again, based on our review of the record, we find no basis to question the reasonableness of the evaluator's judgment that this aspect of the protester's proposal constituted a weakness.

The protest is denied.

Anthony H. Gamboa
General Counsel