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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: D&J Enterprises, Inc.

File: B-310442

Date: December 13, 2007

John T. Flynn, Esq., Weinberg, Wheeler, Hudgins, Gunn & Dial, LLP, for the protester.

Matthew R. Keiser, Esq., U.S. Army Corps of Engineers, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's technical proposal and resulting exclusion from competitive range is denied where record shows agency reasonably downgraded proposal on basis that it failed to address, or inadequately addressed, material solicitation requirements.

DECISION

D&J Enterprises, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. W912P8-07-R-0101, issued by the U.S. Army Corps of Engineers, for debris management services. D&J argues that the Corps unreasonably evaluated its technical proposal, and that its proposal's elimination from the competitive range therefore was improper.

We deny the protest.

The RFP provided for a "best value" evaluation based on price and four equally weighted technical factors: past performance; management/operations plan (with subfactors for organizational structure/key personnel, technical approach and methodology, geographic area management, safety-site specific safety and health plan, quality control plan, waste reduction/recycling strategy); small business subcontracting plan; and technical approach to sample task order (with subfactors for technical approach, production rate, use of local subcontractors, and activity hazard analysis). RFP § M, at 110.

The Corps received and evaluated 23 proposals.¹ D&J's proposal was rated low risk for past performance; acceptable for management/operations plan with, as relevant here, subfactor ratings of acceptable for organization and key personnel, unacceptable for geographic area management, marginal for contractor quality control plan, and unacceptable for disaster debris waste and recycling strategy; marginal for small business subcontracting plan; and acceptable for sample task order with, as relevant, a subfactor rating of unacceptable for job hazard analysis. Consensus Evaluation. The contracting officer and the source selection authority reviewed the evaluation results and concluded that D&J's proposal was not among the most highly rated, and eliminated it from the competitive range. Competitive Range Determination at 2, 3. The Corps included the eight highest-rated proposals in the competitive range.

D&J asserts that the Corps unreasonably evaluated its proposal, specifically challenging many of the weaknesses that resulted in its assigned ratings, and concludes that it should not have been eliminated from the competitive range.

We will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Novavax, Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. Federal Acquisition Regulation (FAR) § 15.306(c)(1); Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. We have reviewed the record and conclude that the evaluation of D&J's proposal and its resultant exclusion from the competitive range were reasonable. We discuss several of the protester's arguments below.

ORGANIZATIONAL STRUCTURE/KEY PERSONNEL

Under the organizational structure and key personnel subfactor of the management/operations plan factor, offerors were required to provide resumes, letters of intent, an explanation of the division of responsibilities, and the management organizational structure to the field supervisory level. RFP § J, attach. 6, at 63, § M, at 110. In rating D&J's proposal acceptable under this subfactor, the Corps identified as a weakness that D&J's key personnel resumes were not sufficiently detailed to support those individuals' assignments under the contract. The agency further found that the proposal did not include required letters of intent, did not clearly identify the key team members, and did not identify the employee

¹ Proposals were rated outstanding, good, acceptable, marginal or unacceptable under each factor and subfactor.

responsible for responding if the Corps contacted the contractor. Consensus Evaluation at 4.

D&J asserts that these weaknesses are unfounded, claiming that its proposal included a list of key personnel showing each individual's job title and experience by specific disaster, including duties and responsibilities, and that its management plan included additional information regarding key personnel experience and qualifications. D&J asserts that its proposal also included detailed corporate and disaster project organization charts, and specifically indicated the employee who would be responsible for responding to Corps contacts.

The evaluation was unobjectionable. Based on our review, D&J's proposal did not include resumes. Instead, it included a list of proposed key personnel, identifying for each the disasters in which the individual had participated and the individual's nominal function or title for each disaster. For example, D&J's proposal listed one principal as having participated in the Hurricane Camille cleanup effort, with responsibility for "bidding," and in the Hurricane Hugo cleanup, as the chief executive officer. However, the proposal did not identify or explain the functions the individual performed in these roles—for example, what responsibility for "bidding" entailed. Proposal, Vol. II, at 1-14. Nor does the additional information that D&J asserts it provided in its management proposal describe the duties of the key personnel in any detail. Instead, in most cases, the information is limited to name and employment history, with very general information about the functions that the employee performed and, in some cases, an education record. Proposal, Vol. III, at 4-9. For example, this information indicated for D&J's proposed project manager that he worked extensively in all areas of field operation, including laborer, equipment operator and project supervisor, and has received certifications in, among other things, environmental compliance and management. The information did not include, for example, a description of the responsibilities in his prior role as project supervisor. Id. at 7. In the absence of this information, we think the agency reasonably concluded that it could not determine whether the proposed key personnel had sufficient experience to perform the jobs for which they were proposed.

Further, while D&J asserts that it provided detailed organization charts in its proposal (Proposal, Vol. III, at 11-12), as the agency notes, many of the individuals listed as key personnel are not identified on the disaster project organization chart. Supp. Agency Report at 4. The agency thus determined—reasonably, we think—that it was not clear which key personnel would actually be performing the contract. In addition, D&J does not dispute that its proposal did not include the required letters of intent for proposed key personnel. Finally, while D&J's proposal did identify an individual who would respond to an agency contact, the Corps points out that this was deemed unacceptable because disaster debris operations require a team response and that is what the agency was looking for in evaluating the proposal. Id. The protester does not dispute the agency's position in this regard. We conclude

that there is no basis for questioning the evaluation under the organizational structure/key personnel subfactor.

GEOGRAPHIC AREA MANAGEMENT

Under the geographic area management subfactor (of the management/operations plan factor), offerors were required to address sectoring, sector managers, the number of crews in each sector, and the haul destination from each sector. RFP § J, attach. 6, at 63, § M, at 110. The Corps rated D&J's proposal unacceptable under this subfactor based on its finding that it did not address the identified elements. Consensus Evaluation at 6. D&J concedes that it did not address sectoring, sector managers, the number of crews in each sector, or haul destinations, but maintains that it could not address these items without knowing the specific disaster involved; it concludes that it was unrealistic and unreasonable for the agency to require offerors to address these factors. Since D&J failed to address the requirements specified in the solicitation, the agency reasonably could determine that the proposal was unacceptable under this subfactor. To the extent D&J believed the requirements were unreasonable, it was required to protest on this ground prior to the closing time for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) 2007.

SMALL BUSINESS SUBCONTRACTING PLAN

Section L of the solicitation provided percentage goals for the subcontracting plan for different groups (e.g., small businesses and small disadvantaged businesses), and required offerors to provide information demonstrating how they had met small business goals under prior contracts. RFP § L, at 102. Offerors' subcontracting plans were to be evaluated against the section L goals, as well as for compliance with Army Federal Acquisition Regulation Supplement (AFARS), Appendix DD. RFP § M, at 110. The agency rated D&J's proposal marginal under the subcontracting plan factor because D&J's plan did not fully comply with the appendix and because, while its proposal offered to meet the RFP's stated goals, it did not include any information demonstrating that D&J had met its subcontracting goals in the past, as required by the RFP. Consensus Evaluation at 8-9. D&J argues that its proposal in fact addressed each item in the appendix, and therefore unreasonably was rated marginal.

The evaluation was unobjectionable. The basis for D&J's argument—that it addressed each item in the appendix—ignores the manner in which the evaluation in this area was structured. AFARS appendix DD contains eight items, under seven of which proposals were scored based on criteria established in the appendix, and the last of which contained subitems, all of which a subcontracting plan had to satisfy in order to be found acceptable. AFARS Appendix DD. Under this rating scheme, a proposal did not receive the maximum available score simply because it addressed each item. D&J's plan received 33 of the 100 available points, including fewer than the full amount of available points for each of the seven scored items; for example,

while its plan addressed item 2 (efforts to broaden the small business and small disadvantaged business active vendor base), it received only 2 of 10 available points for the item. AFARS Scoring Sheet at 1. Moreover, regarding D&J's general assertion that it addressed all items, our review confirms that it did not furnish information showing compliance with subcontracting goals under prior contracts. Based on this failure, and D&J's overall subcontracting plan score, the agency reasonably rated its plan marginal.

SAMPLE TASK ORDER--ACTIVITY HAZARD ANALYSIS

Offerors were required to submit an activity hazard analysis (AHA), in accordance with the latest version of Engineer Manual (EM) 385-1-1, to address the situation presented by the sample task order (STO). The agency rated D&J's proposal unacceptable under the STO factor for failure to include this analysis. The protester asserts that the evaluation was unreasonable because its proposal did in fact include the required analysis, under its management plan.

This argument is without merit. While D&J's management plan indeed included an AHA, the RFP actually required two AHA's--one under the management plan (RFP attach. 6, at 83) and one specifically responding to the STO scenario (RFP § L, at 103, § J, attach. 12, at 86, § M, at 110). D&J's proposal omitted the separate AHA for the STO, and did not indicate that the AHA included with its management plan was also meant to be considered as its response to the STO. In any case, the AHA included with D&J's management plan (Proposal, Vol. II, at 120) did not address all of the requirements detailed in EM 385-1-1. For example, D&J's AHA did not list equipment or training requirements, both of which were to be included in the AHA for the STO scenario. EM 385-1-1, Figure 1-2. We conclude that there is no basis to question the agency's evaluation of D&J's AHA under the STO factor.

The protest is denied.

Gary L. Kepplinger
General Counsel