



Decision

Matter of: AH Computer Consulting, Inc.

File: B-401204

Date: June 25, 2009

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General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against elimination of protester's proposal from competitive range is denied where record supports reasonableness of the agency's evaluation of protester's proposal as technically unacceptable.

DECISION

AH Computer Consulting, Inc. (AHCC) of Rockville, Maryland, protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. 2608080056, issued by the Department of the Interior, National Park Service (NPS) for the acquisition of a Service-wide Point of Sale (POS) System for collection, accounting, and centralized reporting of NPS fee revenues. The protester argues that the evaluation of its proposal was unreasonable.

We deny the protest.

BACKGROUND

The RFP sought to procure a standardized commercial off-the-shelf (COTS) POS system consisting of a Centralized Point of Sale Database (CPOSD), which is to be housed in Denver, Colorado, and POS configurations, *i.e.*, equipment and software to be used in collection locations in parks. Functions to be performed by the CPOSD include the capture of fee-collection data from the POS configurations and other external sources; remittance, deposit, and accountability for all collected funds; and reporting on all fee-collecting activities. Functions to be provided by the POS configurations include collections of park entrance and other fees by NPS staff,

generation of visitor receipts for transactions, and transmission of all transaction data to the CPOSD.

The RFP contemplated the award of an indefinite-quantity contract for a base and 4 option years and provided for award to the offeror whose proposal represented the best value to the government based on the following factors (in descending order of importance): technical, management approach, relevant experience and past performance, and price. The technical factor included ten subfactors, the most important of which was the ability to provide a POS system including a CPOSD and POS configurations.¹ In connection with this subfactor, the RFP instructed offerors to complete the functional requirements matrix included in the RFP.² The functional requirements matrix indicated which types of functionality were required of the various categories of POS configurations and of the CPOSD, both as connected to Denver and as disconnected from Denver.³

The contracting officer states that perhaps the most unique and defining characteristic of the POS system sought is that it must be capable of providing deposit, remittance, and reconciliation functionality while disconnected from the Denver CPOSD; accordingly, the RFP's functional requirements matrix identified a series of remittance, deposit, and reconciliation activities that the system had to be capable of performing both when connected to, and when disconnected from, the Denver CPOSD. RFP, Functional Requirements Matrix, 11-14. The contracting officer notes that the disconnected functionality is required due to the wide range of network connectivity available at the various NPS fee collection points where the POS terminals will be installed; while some of the highly developed collection sites have broadband high-speed access, other sites have only dial-up access or no access at all. In connection with the foregoing, the Performance Work Statement (PWS) furnished offerors with the following guidance pertaining to the provision of CPOSD functionalities where reliable agency intranet access is unavailable:

¹ Other technical subfactors were the ability to implement the appropriate security controls; architecture of the POS system; approach and/or methodology to integrating data to/from external systems; approach to providing installation and training; approach to providing maintenance and support for POS configurations; approach to ongoing operations and maintenance of the CPOSD; compliance with Section 508 standards; and requirements for specialized server hardware or software for the proposed CPOSD.

² Under this subfactor, offerors were also instructed to describe how they would deliver, configure, and customize their COTS product; provide make, model, and description for their POS configurations; and demonstrate their proposed POS system solution during an oral presentation.

³ The RFP identified three types of POS configurations to be procured: standard POS configurations, light-duty POS applications (software-only to run on existing NPS computers), and hand-held POS devices. PWS at 5.

In order to support CPOSD activities in parks that are not connected reliably or regularly to the NPS Intranet, the CPOSD may include a park level CPOSD component. For these locations, the data in the park-level CPOSD shall be ultimately transferred to the Servicewide CPOSD. Functionality that is required in a park-level CPOSD vs. the Servicewide CPOSD is documented in [the Functional Requirements Document (FRD) and Matrix].

PWS at 29.

The agency received and evaluated a number of proposals and established a competitive range. While the technical evaluators considered the protester's initial proposal to be technically unacceptable, the contracting officer decided to include it in the competitive range because the deficiencies identified by the evaluators were susceptible of correction through the discussion process. The contracting officer issued evaluation notices (EN) identifying weaknesses, deficiencies, and areas requiring clarification to each of the offerors included in the competitive range. The agency also scheduled each offeror for an oral presentation. A formal written response to the ENs was due from each offeror one week after its oral presentation.

After receiving and reviewing offeror responses to the ENs, the technical evaluators determined that several proposals, including the protester's, should no longer be included in the competitive range. The protester's proposal was excluded from further consideration because the evaluators assigned it an overall rating of red (unacceptable) under the technical evaluation factor.⁴ The overall rating of red was attributable to the proposal's having received a rating of red under the most important technical subfactor, *i.e.*, ability to provide a POS system complying with the stated functional requirements.⁵ The principal requirements with which the protester's proposed system was found not to demonstrate compliance were those pertaining to deposit, remittance, and reconciliation functionality while disconnected from the Denver CPOSD. After receiving notification that its proposal

⁴ Proposals were assigned color ratings at the subfactor level in accordance with the following scheme: blue (exceeds specified minimum performance or capability requirements in a way beneficial to the NPS), green (meets specified minimum performance or acceptability requirements necessary for acceptable performance), yellow (does not clearly meet some specified minimum performance or capability requirements necessary for acceptable contract performance, but any proposal inadequacies are correctable), and red (fails to meet specified minimum performance or capability requirements).

⁵ The proposal was rated green under all of the other technical subfactors, except architecture (which was rated yellow) and approach to providing installation and training (which was rated blue).

had been excluded from the competitive range, the protester requested and was furnished a pre-award debriefing; it then protested the evaluation of its proposal to our Office.

DISCUSSION

In reviewing a protest challenging an agency's evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits; rather, we will examine the record to determine whether the evaluation was reasonable and consistent with the evaluation criteria. Foster-Miller, Inc., B-296194.4, B-296194.5, Aug. 31, 2005, 2005 CPD ¶ 171 at 6. Contracting agencies are not required to retain a proposal in the competitive range where the proposal is not among the most highly rated or where the agency otherwise reasonably concludes that the proposal has no realistic prospect of award. Federal Acquisition Regulation § 15.306(c)(1); Hamilton Sundstrand Power Sys., B-298757, Dec. 8, 2006, 2006 CPD ¶ 194 at 6. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. Hamilton Sundstrand Power Sys., supra. As explained below, based on our review of the record here, we think that the agency's evaluation, and the subsequent decision to exclude AHCC's proposal from the competitive range, were reasonable.

As a preliminary matter, in its initial protest AHCC argued that it was improper for the evaluators to have assigned its proposal an overall rating of red under the technical evaluation factor when they had assigned a rating of red under only one of the multiple subfactors. The protester further argued that the evaluators had improperly assigned its proposal a rating of yellow under the "supplier agreement" subfactor. The agency responded to the protester's arguments in its report on the protest.⁶ In its comments on the agency report, the protester did not attempt to

⁶ With regard to the protester's complaint regarding its overall technical rating, the agency explained that the protester's proposal had received a rating of red under the most heavily weighted technical subfactor (ability to provide a POS system including a CPOSD and POS configurations), and that the ratings that the proposal received on the other subfactors were insufficient to overcome the critical deficiencies that the evaluators identified under the most heavily weighted subfactor. The agency further argued that, in any event, a proposal that failed to meet one or more of the RFP's material requirements was technically unacceptable and could not form the basis for an award. Universal Yacht Servs., Inc., B-287071, B-287071.2, Apr. 4, 2001, 2001 CPD ¶ 74 at 4. With regard to the protester's complaint regarding the rating of its proposal under the "supplier agreement" subfactor, the agency explained that the RFP did not include a "supplier agreement" subfactor, but that it did provide for "Supply Chain (including proposed vendors and subcontractors)" to be considered under the most heavily-weighted of the management approach subfactors, i.e.,

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rebut or otherwise address the agency's response to either of these arguments; accordingly, we consider it to have abandoned these arguments. CM Mfg., Inc., B-293370, Mar. 2, 2004, 2004 CPD ¶ 69 at 3.

The protester argues that the evaluators improperly assigned its proposal a rating of red/unacceptable under the technical subfactor relating to its system's ability to operate in disconnected mode. As explained below, we see no support in the record to question the agency's evaluation of the proposal in this area or the resulting decision to exclude it from the competitive range on this basis.

As the agency points out, the ability to provide remittance, deposit, and reconciliation functionality while disconnected from the Denver CPOSD was specified as a mandatory capability in the functional requirements matrix; the ability to provide these functionalities therefore was assessed and evaluated under the first and most important of the technical subfactors, "ability to provide a POS system including a CPOSD and POS configurations." The agency explains that in reviewing the protester's initial proposal, the evaluators found that it failed to articulate a solution capable of providing the required functions while disconnected from the Denver CPOSD, but decided to give the firm the opportunity to address this and other concerns through discussions. Accordingly, the agency issued the protester a number of detailed ENs seeking additional information regarding its proposed approach to providing the required functionality. After reviewing the protester's responses to the ENs, the evaluators concluded that AHCC had not demonstrated that its system would be able to perform the required functions while disconnected from the Denver CPOSD, and identified various deficiencies in the protester's proposal under the ability to provide a compliant POS system subfactor. SSET Report, Feb. 27, 2009, at 2-4. The agency ultimately concluded that the protester's proposal was unacceptable under this subfactor, resulting in an overall unacceptable rating for the proposal.

While AHCC argues that its initial proposal showed that its POS configurations would be capable of furnishing the functionalities in question while disconnected from the CPOSD, our review of the record shows that, as the agency found, AHCC's initial proposal did not make clear that its POS configurations had the required capability in this area; in fact, it was precisely this lack of clarity that reasonably led the agency to repeatedly ask the

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approach to managing the POS system program. NPS argued that the protester's assertion that but for the allegedly improper evaluation with respect to supplier agreements, it would have remained in the competitive range, was unfounded given the weight accorded that aspect of the proposal, and that, in any event, the rating of yellow was warranted given that the evaluators had reasonably determined that AAHC had failed to articulate an adequate supply chain management approach.

protester to clarify the matter during discussions. AHCC also contends that it demonstrated compliance with the solicitation requirement by disclosing in its EN responses and oral presentation that during off-line periods, the data needed to perform the remittance activity could be transferred to secure encrypted disk devices capable of being uploaded to the CPOSD. Rather than supporting AHCC's position, however, this argument illustrates the deficiency in the protester's proposal. That is, instead of clarifying in its EN responses that the POS configurations included remittance, deposit, and reconciliation functionality, the protester's responses repeatedly referred to those functions as being performed by the CPOSD.⁷ The RFP requirement, however, was not that the offeror demonstrate a way of getting data from locations without agency intranet access to the Denver-based CPOSD for performance of the remittance and deposit functions; it was that the offeror demonstrate the capability to perform the remittance, deposit, and reconciliation functions at the collection sites without access to the Denver-based CPOSD. Based on the information furnished by the protester in its proposal and in its responses to the ENs, we think that the evaluators reasonably concluded that the protester had not demonstrated that its POS system would be capable of furnishing remittance, deposit, and reconciliation functionality while disconnected from the Denver CPOSD, as required by the RFP.⁸

Finally, the protester argues that the contracting officer improperly failed to consider offerors' past performance and proposed pricing in his second competitive range determination. In support of its argument, the protester cites the following statement from the contracting officer's memorandum explaining the basis for his decision to narrow the competitive range: "Past Performance and Price were evaluated for all Offerors, however these evaluation factors were not determining factors in the removal of any of the Offerors from the competitive range." AR, Tab 12, Narrowing of the

⁷ For example, in its response to EN ICR011, the protester stated "All POS configurations (. . .) data is sent to the CPOSD for reporting, remittance, deposit and archiving activities." Similarly, in response to EN ICR009, AHCC explained that "[w]hile the POS Configurations are connected to CPOSD, all transaction data is replicated to the CPOSD for remittance and deposit activities." Agency Report (AR), Tab 11.

⁸ AHCC also asserts that at its debriefing the evaluators improperly identified as an additional area of concern its current status with regard to obtaining a certification for credit card processing with NPS's designated bank. We need not address this issue given our conclusion that the evaluators reasonably determined that AHCC's proposal failed to demonstrate compliance with the RFP requirement that the system be capable of performing remittance and deposit activities while disconnected from the Denver-based CPOSD and on that basis reasonably determined the proposal to be technically unacceptable.

Competitive Range Memorandum at 2. Contrary to the protester's argument, the record--as reflected in the statement AHCC itself quotes--shows that the contracting officer in fact did consider the offerors' past performance and proposed pricing, and decided that those factors did not provide a basis to distinguish among the proposals. In any event, an agency may exclude a proposal properly found technically unacceptable from the competitive range regardless of its price or the offeror's past performance rating. TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 4.

In sum, we conclude that the record shows that the agency reasonably concluded that AHCC's proposal was unacceptable under the most important technical subfactor, relating to the proposed system's capability to perform certain functions while disconnected from the Denver CPOSD, and that the agency therefore reasonably found the proposal unacceptable overall for failing to meet a material requirement of the RFP, and properly excluded it from the competitive range based on its lack of technical acceptability.

The protest is denied.

Daniel I. Gordon
Acting General Counsel