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

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Decision

Matter of: Irving Burton Associates, Inc.

File: B-401983.3

Date: March 29, 2010

Brian P. Waagner, Esq., and Michael A. Gatje, Esq., Husch Blackwell Sanders LLP, for the protester.

Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, for Technology, Automation & Management, Inc., an intervenor.

Captain Elisabeth Gilman, 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. Protest challenging agency's evaluation of awardee's proposal is sustained where record fails to demonstrate reasonable basis for evaluators' conclusion that awardee had complied with solicitation requirements for a transition plan and for identification of project milestones.

2. Protest challenging agency evaluation of protester's proposal is sustained where record fails to demonstrate reasonable basis for evaluators' findings pertaining to lack of detail in protester's proposal.

DECISION

Irving Burton Associates, Inc. (IBA) of Falls Church, Virginia, protests the issuance of a task order to Technology, Automation & Management, Inc. (TeAM) of Falls Church, Virginia, under task order proposal request (TOPR) No. JLF-09-13284, issued by the Army Medical Research Acquisition Activity, Department of the Army, for defense health information management system support services. Competition under the TOPR was restricted to prior awardees of a multiple-award indefinite-delivery/indefinite-quantity contract for TriCare evaluation, analysis, and management support services. IBA argues that the agency's evaluation of the task order proposals was unreasonable.

We sustain the protest.

BACKGROUND

The TOPR contemplated the issuance of a fixed-price task order for a 1-year base period, two 1-year option periods, and a 60-day outgoing transition period. The order was to be issued to the contractor whose proposal represented the best value to the government; non-price factors, when combined, were of greater importance than price. In descending order of importance, non-price factors consisted of experience, technical approach, management approach, quality control approach, and past performance.

Three contractors submitted proposals by the August 26, 2009 closing date. The agency evaluated the proposals and assigned the following ratings to IBA's and TeAM's proposals:

Factor	IBA Rating	TeAM Rating
Experience	[deleted]	[deleted]
Technical Approach	[deleted]	[deleted]
Management Approach	[deleted]	[deleted]
Quality Control Approach	[deleted]	[deleted]
Past Performance	[deleted]	[deleted]
Overall Consensus Rating for all factors except past performance	Acceptable	Good

Contracting Officer's Statement at 8.¹ IBA's evaluated price was approximately \$21

¹ Proposals were to be rated under the technical factors as exceptional, good, acceptable, marginal, or unacceptable. Ratings of good and acceptable were defined as follows:

Good: The proposal demonstrates a sound approach, which is expected to meet all requirements and objectives. This approach includes substantial advantages, and few relatively minor disadvantages, which collectively can be expected to result in better than satisfactory performance. The solutions proposed are considered to reflect low risk in that they are clear and precise, supported, and demonstrate a clear understanding of the requirements.

Risk Level: Low.

Acceptable: The proposal demonstrates an approach, which is capable of meeting all requirements and objectives. The approach has both advantages and disadvantages, however the disadvantages do not outweigh the advantages and the approach can be expected to result in satisfactory performance. The solutions proposed are considered to

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million, while TeAM's price was approximately \$19.5 million. The contracting officer determined that TeAM's proposal represented the best value to the government and issued a task order to it on September 23.

IBA protested to our Office on September 25. On October 28, IBA filed a supplemental protest, arguing that the agency had improperly permitted TeAM to exceed solicitation limitations on proposal length.² On November 2, the agency notified our Office that it intended to take corrective action in response to the supplemental protest. Specifically, the contracting officer advised us that the agency would reevaluate TeAM's proposal in accordance with the stated evaluation criteria, and, if the reevaluation resulted in the selection of a contractor other than TeAM, terminate the order issued to TeAM and issue a new order to the selected contractor.

The evaluation team reevaluated TeAM's proposal. The only change was a lowering of the rating under the management approach factor from [deleted]. The agency again determined that TeAM's proposal represented the best value to the government. On December 15, the Army notified IBA of its determination. On December 17, IBA again protested to our Office.

ANALYSIS

The protester challenges the agency's evaluation of both proposals. With regard to TeAM's proposal, IBA contends that the evaluators could not reasonably have assigned a rating of [deleted] under the management approach factor given that once the pages in excess of the solicitation limitations were excluded from the TeAM proposal, the proposal did not include a transition plan or required project milestones. With regard to its own proposal, IBA argues that it should have received

(...continued)

reflect moderate risk in that they are for the most part clear, precise, and supported, and demonstrate a general understanding of all the requirements.

Risk Level: Moderate.

TOPR at 12.

² The TOPR notified contractors that "non-cost/price proposals are limited to thirty (30) single-sided pages (not including resumes and past performance)." TOPR at 2. It also provided that the contractor should include a quality control plan and a program management plan as attachments to its non-cost/price proposal, and that each of these attachments was limited to 10 single-side pages. *Id.* at 4, 5. The TOPR further advised contractors that "[f]or any sections of a proposal with a defined page limit, pages exceeding the specified limit will be removed and not forwarded for evaluation." *Id.* at 1.

ratings of higher than [deleted] under the experience, technical approach, and management approach factors.

In reviewing an agency's evaluation, we will not reevaluate proposals; instead, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation evaluation criteria and applicable procurement statutes and regulations. ESCO Marine, Inc., B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 9. Based on our review of the record here, we agree with the protester that the agency's evaluation of both proposals was unreasonable. Accordingly, we sustain IBA's protest.

Evaluation of TeAM proposal

The TOPR required offerors to provide a 60-day plan for incoming transition as part of their proposals. The TOPR furnished a great deal of detail regarding the required content of this plan, instructing that it was to address the following topics:

- Coordination with Government representatives,
- Review, evaluation and transition of current support services,
- Transition of historic data to new contractor system,
- Government-approved training and certification process,
- Transfer of hardware warranties and software licenses,
- Transfer of all System/Tool documentation to include, at a minimum: user manuals, system administration manuals, training materials, disaster recovery manual, requirements traceability matrix, configuration control documents and all other documents required to operate, maintain and administer systems and tools,
- Transfer of compiled and uncompiled source code, to include all versions, maintenance updates and patches,
- Orientation phase and program to introduce Government personnel, programs, and users to the Contractor's team, tools, methodologies, and business processes,
- Distribution of Contractor purchased Government owned assets, including facilities, equipment, furniture, phone lines, computer equipment, etc.,
- Transfer of Government Furnished Equipment (GFE) and Government Furnished Information (GFI), and GFE inventory management assistance,
- Applicable TMA briefing and personnel in-processing procedures,
- Coordinate with the Government to issue and account for government keys, ID/access cards, and security codes.

TOPR at 2-3. In addition, the TOPR instructed offerors to include a draft Program Management Plan (PMP) as an attachment to their proposals. The solicitation identified four items that "at a minimum" were to be addressed in the draft PMPs; of relevance to this protest, one of the required items was "[i]dentification of

milestones where Government information/activity is required and timeline dependencies for subsequent Contractor activities.” TOPR at 4.

TeAM included a [deleted] incoming transition plan as an attachment to its non-price proposal; because the TOPR provided that the transition plan was to be submitted as part of the non-price proposal subject to the page limitations imposed thereon, the contracting officer states that she removed the attachment from the copy of TeAM’s proposal that she provided to the evaluators for reevaluation. Similarly, the contracting officer states that she removed the final 10 pages of TeAM’s [deleted] PMP because the solicitation placed a limitation of 10 pages on this attachment. In their reevaluation, the evaluators attributed [deleted] weaknesses and [deleted] weakness to the TeAM proposal under the management approach factor; [deleted]. The evaluators noted that [deleted]. Evaluation Panel Report, Dec. 10, 2009, at 20. Despite this finding, the evaluators assigned the proposal an overall rating of [deleted] under the management approach factor.

IBA argues that the rating of [deleted] is unreasonable given that TeAM’s proposal did not include a transition plan and did not identify project milestones. In response to the first point, the agency maintained that while TeAM’s proposal lacked a full transition plan, it did address transition issues and thus merited an [deleted] rating. In particular, the agency pointed to language in the proposal addressing TeAM’s [deleted]; acknowledging the phases of the [deleted] to be supported under the task order; discussing TeAM’s approach to [deleted]; and referring to TeAM’s experience in [deleted]. The protester responded that these references could not reasonably be considered an adequate response to the solicitation requirement for a transition plan addressing the 10 items summarized above.

We agree with the protester. As noted above, the TOPR required contractors to furnish a plan addressing a number of aspects of transition, including the offeror’s plans for ensuring that existing data, documentation, source code, and equipment would be successfully transferred to it. The language from TeAM’s proposal cited by the agency [deleted]. Because the pared-down version of the TeAM proposal that the evaluators considered during their reevaluation not only failed [deleted], but also failed to otherwise address the required elements [deleted], we do not think that the evaluators could reasonably have considered the proposal to satisfy the solicitation requirement for a transition plan. Absent a basis for finding that the proposal had demonstrated an approach to meeting the requirement, we do not think that it was reasonable for the evaluators to have assigned the TeAM proposal a rating of [deleted] under the management approach factor, because the TOPR provided for the assignment of a rating of [deleted].

The protester also complains that TeAM’s draft PMP failed to identify project milestones, as required by the TOPR, and thus failed to reflect an acceptable management approach. In response, the agency argues that while the table in which TeAM identified its project milestones was not considered in the reevaluation (due

to enforcement of the solicitation's page limitations), the proposal otherwise adequately identified the milestones [deleted]. Based on our review of the record, we fail to see how the proposal passages cited by the agency adequately identified the project milestones [deleted]. For example, the agency points to TeAM's statement in its PMP that [deleted], TeAM Proposal, Attach. 3 (PMP), at 4. In our view, this statement is not sufficient to incorporate the milestones into the proposal; where, as here, a solicitation requires offerors to furnish detailed information to demonstrate compliance with solicitation requirements, [deleted] is not sufficient to demonstrate that a proposal meets the requirements. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 5.

In sum, in addition to lacking a reasonable basis for concluding that the TeAM proposal complied with the TOPR requirement for a transition plan, we think that the evaluators lacked a reasonable basis for finding that TeAM complied with the solicitation requirement for a PMP setting forth project milestones. Accordingly, we agree with the protester that it was unreasonable for the evaluators to assign TeAM's proposal a rating of [deleted] under the management approach factor.

Evaluation of IBA proposal

The protester argues that its proposal should have received a rating of better than [deleted] under the experience, technical approach, and management approach factors.

Experience

The solicitation advised offerors that under the experience factor, the agency would consider the degree to which their proposals demonstrated experience in providing program management in support of Armed Forces Health Longitudinal Technology Application (AHLTA), Composite Health Care Systems (CHCS), and Essentris within the TRICARE Management Activity (TMA); experience in business and program operations (to include various phases of administrative support, development and deployment across program functions, execution, management of multiple programs, and oversight of software design and development); experience in meeting the appropriate Department of Defense Information Assurance requirements; and experience in clinical program support and deployment schedules across multiple functions. In addition, the solicitation provided for consideration of the degree to which the offeror's proposal reflected appropriate staff skill sets for the tasks. TOPR at 8.

The evaluators assigned IBA's proposal a rating of [deleted] under the experience factor, finding that it contained both strengths and weaknesses. The following strengths were identified: [deleted]. Evaluation Report at 10-11.

In addition to the above strengths, the evaluators identified the following [deleted] weaknesses in the protester's proposal:

[deleted]

Id. at 12. The evaluators also noted as weaknesses that while the protester had furnished a good description of [deleted], it had not demonstrated how [deleted], and that while it had explained how [deleted], it had done [deleted].

Id.

IBA argues that the criticisms of its proposal were not justified. The protester contends, citing specific examples from its proposal, that the proposal did furnish detail describing its [deleted]. IBA further argues that in finding that the proposal lacked detail regarding its [deleted], the evaluators had ignored information included in [deleted] and in the resumes of [deleted]; in support of this argument, the protester again points to specific passages from its proposal. IBA also argues that the attribution of a weakness to its proposal for its failure to describe [deleted] and to provide [deleted] regarding the positive impact of [deleted] was inconsistent with the terms of the solicitation, which did not advise offerors that [deleted] was a criterion on which their proposals would be evaluated.

The agency failed to furnish persuasive responses to these arguments in its report. The agency maintained that while the protester had cited specific instances of [deleted], it had not furnished enough detail regarding [deleted]. The agency cited as an example of the protester's generalized approach to describing [deleted] the following paragraph from the proposal:

[deleted]

IBA Proposal at 28-29. We fail to see how this excerpt supports the agency position that IBA's proposal did not furnish detail regarding the protester's [deleted]. The agency also failed to explain how the solicitation placed offerors on notice that the extent to which they [deleted] was to be a factor in evaluating their [deleted].

In response to the protester's argument that the evaluators had overlooked the detail regarding [deleted], the agency maintained that the evaluators had considered the detail [deleted], but had concluded that [deleted]. We are not persuaded by the agency's argument given that [deleted]. Further, in response to the protester's argument that it had furnished detail regarding its [deleted], the agency argued that the evaluators had properly [deleted]. TOPR at 7. We do not think that the fact that the solicitation provided for past performance to be evaluated separately from experience (and the other non-cost/price evaluation factors) provided the evaluators with a reasonable basis [deleted], particularly given that IBA explicitly referred to [deleted].

Further, in finding that IBA had not furnished specifics regarding its [deleted], the agency appears to have failed to take into consideration information provided in the section of its proposal describing its technical approach. For example, in describing its approach to [deleted], the protester stated that it had [deleted].”³

In sum, we do not think that the record here demonstrates a reasonable basis for [deleted] weaknesses, including the [deleted], attributed to the protester’s proposal under the experience factor.⁴ Accordingly, we do not think that the record demonstrates a reasonable basis for the evaluators to have rated IBA’s proposal as [deleted] under the factor.

Technical approach

As was the case with regard to the experience factor, the evaluators assigned the protester’s proposal a rating of [deleted] under the technical approach factor based on their finding that in addition to [deleted], the proposal contained [deleted]. The evaluators identified as strengths [deleted]. The evaluators also identified the following strength:

[deleted]

Evaluation Report at 13. The evaluators identified the following weaknesses in the proposal, [deleted]. Id.

IBA argued initially that the evaluators’ findings of strength and weakness were inconsistent; that is, the finding (of weakness) that it had not provided enough detailed information to show an understanding of [deleted] was contradicted by the finding [deleted]. The protester also disputed the evaluators’ characterization of its approach [deleted], citing specific examples of detail from its proposal.

The agency responded to the protester’s argument regarding inconsistency in the evaluators’ findings by explaining that the proposal had demonstrated an understanding of [deleted], which was a strength, but that it had failed to provide enough detail to show an understanding of [deleted], which was a weakness. The agency further explained that the [deleted]. Contracting Officer’s Statement at 16.

We think that the agency’s explanation of the weakness pertaining [deleted] is reasonable, but we fail to see a reasonable basis for the finding of [deleted], as

³ For several other required tasks, IBA stated that it would [deleted]. Id. at 21. We think that it may reasonably be inferred from the references [deleted].

⁴ We see no basis to question the reasonableness of the evaluators’ finding that IBA had not [deleted].

restated by the contracting officer—i.e., [deleted]. Indeed, the agency concedes in its report that the protester furnished a detailed approach for [deleted]. Agency Report at 34. Moreover, the agency has failed to demonstrate a basis for its conclusion that the protester’s approach was [deleted]. Because the record fails to demonstrate a reasonable basis for the [deleted] attributed to IBA’s proposal under the technical approach factor, we sustain IBA’s objection to the evaluation of its proposal under this factor.⁵

RECOMMENDATION

We recommend that the agency conduct such discussions with the offerors as it determines necessary; that it request revised proposals, if necessary; and that it reevaluate the proposals and make a new source selection determination. If IBA’s proposal is selected as representing the best value to the government, we recommend that the agency cancel the order issued to TeAM and issue an order to IBA. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d) (2009). The protester’s certified claim for costs, detailing the time spent and the cost incurred, must be submitted to the agency within 60 days after receiving this decision.

The protest is sustained.

Lynn H. Gibson
Acting General Counsel

⁵ We also considered the protester’s objection to the agency’s evaluation of its proposal under the management approach factor, but find no basis to object to the agency’s rating of the proposal as [deleted] under the factor.