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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: M&M Ret. Enterprises, LLC

File: B-297282

Date: December 15, 2005

Dale F. Meeks for the protester.

Pamela A. Dugger, Esq., and Eric Kattner, Department of the Air Force, for the agency.

Peter D. Verchinski, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency should have rejected awardee's proposal as technically unacceptable for failure of the company's owners/management personnel to hold allegedly required security clearances is denied, where solicitation did not expressly require clearances for those personnel, and there is no basis to conclude that contract work cannot be performed as required without those additional clearances.

DECISION

M&M Ret. Enterprises, LLC protests the Department of the Air Force's award of a contract to TD Support Services (TDSS) under request for proposals (RFP) No. FA4897-05-R-0013, for facilities management and information technology activity security support services at Mountain Home Air Force Base.¹ M&M primarily argues

¹ These services are to be performed in support of the Mission Training Center (MTC), and include program support, administrative support, quality assurance services, and technical services for the 366th Fighter Wing flying squadron. More specifically, the contractor is to provide personnel with technical expertise in operational security, communication security, automated information security, security programs, information systems security, classified documentation and media control, combat readiness training, and facilities security. Also included in the solicitation are facilities management services, such as monitoring the MTC's temperature and humidity, and coordinating repairs.

that the Air Force should have found the awardee's proposal technically unacceptable.

We deny the protest.

The RFP, which was set aside for small businesses owned by service-disabled veterans, contemplated the award of a fixed-price contract for a period of 1½ months, with four 1-year option periods. The solicitation stated that the Air Force would select, from among the technically acceptable proposals, the proposal that represented the "best value" to the government, with price and past performance as the two equally-weighted evaluation factors. Technically acceptable proposals were defined as those evidencing the firm's ability to understand and satisfy the requirements. RFP at 17. The RFP included a requirement that all contract personnel have secret security clearances, and, in order to allow the Air Force to verify the clearances, offerors were required to submit a list of personnel names and social security numbers with the proposal. Id.

The agency received six proposals that it deemed to be technically acceptable, including M&M's and TDSS's. The Air Force evaluated the proposals and gave M&M, a recently formed company consisting of the two individuals who had been performing the work at issue for the incumbent contractor, a past performance rating of satisfactory/some confidence. The agency reasoned that this rating reflected both the two individuals' lack of experience managing a company, and the exceptional past performance ratings they received for their work. Agency Report (AR), Tab 13, Proposal Evaluation Report, at 6. The Air Force gave TDSS a past performance rating of neutral/unknown confidence based on the firm's lack of relevant past performance. In this respect, although TDSS had submitted past performance information for four contracts, the Air Force determined that these contracts were not relevant to the requirement here. Id. at 7. The agency also concluded that TDSS had met the security clearance requirement by submitting the names of two individuals who had the appropriate clearances. Id. The Air Force subsequently determined that TDSS's lower-priced proposal (\$471,073, compared to M&M's price of \$626,667) offered the best value to the government, and made award to that firm.

M&M principally argues that the agency should have found TDSS's proposal technically unacceptable since, although TDSS's proposed personnel hold secret security clearances, TDSS's owner (or management personnel) lacks a secret security clearance.² M&M asserts that TDSS's owner was required to have this

² In its comments on the agency report, M&M also challenges the agency's determination that M&M lacks relevant corporate management experience. Since M&M became aware of this determination during the agency debriefing, it was required to raise this protest basis within 10 days of the debriefing. Due to its failure
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clearance because the solicitation stated that “all personnel supporting” the performance work statement (PWS) were to have such a clearance and, M&M asserts, various provisions in the PWS required the contractor’s owner (or management) to support the contract. PWS § 1.3. In this regard, M&M points to such PWS language as “[t]he contractor shall” perform certain duties (such as maintain a current list of employees, have a contract manager, have a company facility security officer, have a contractor security point of contact, obtain passes and identification items for employees, etc.), and concludes that these requirements are to be performed by the owner (or management personnel) in support of the contract, rather than the on-site employees.

In reviewing a procuring agency’s evaluation of an offeror’s technical proposal, we will not question an agency’s evaluation judgments absent evidence that those judgments were unreasonable or contrary to the stated evaluation criteria. Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4. Furthermore, to be reasonable, an interpretation of a solicitation provision must be consistent with the solicitation when read as a whole and in a reasonable manner. Burns and Roe Servs. Corp., B-251969.4, Mar. 1, 1994, 94-1 CPD ¶ 160 at 7. We will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. International Data Prods.; Commax Techs., Inc., B-275480.2 et al., Apr. 3, 1997, 97-1 CPD ¶ 179 at 4.

We find no basis to conclude that TDSS’s owner/management personnel were required to have a secret security clearance. Notwithstanding the protester’s attempt to read a more restrictive requirement into the RFP, there was nothing in the RFP that expressly required personnel other than those proposed to perform the contract to hold security clearances. The RFP did require “all personnel supporting” the contract to hold clearances, but it did not specify that the owner/management personnel were required to perform services in support of the contract, such that they would be required to hold clearances. While the protester would have us read the PWS as assigning the owner/management personnel functions that would bring them under the heading of personnel supporting the contract, in fact, nothing in the RFP required that any function be performed by other than the proposed personnel. The solicitation’s statement that “the contractor shall” perform certain functions required only that the functions be performed, not that the owner/management personnel perform them. We note, in this regard, that under the protester’s own proposal all functions would be performed by one or both of M&M’s on-site employees. While, apparently unlike TDSS, M&M’s on-site employees are also management personnel, nothing in the solicitation would preclude TDSS from empowering its on-site employees to perform these same functions. Accordingly,

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to do so, this aspect of the protest is untimely, and will not be considered. 4 C.F.R. § 21.2(a)(2) (2005).

since it is undisputed that TDSS's on-site personnel hold the required security clearances, the agency reasonably determined that TDSS met the security clearance requirement.

In any case, we note that, even if we accepted M&M's reading of the RFP, it is not apparent--and M&M does not explain--how M&M was competitively harmed by the agency's less restrictive reading of the security clearance requirement. Specifically, M&M does not assert that it would have structured or priced its proposal differently had it been aware that the agency would not require owners/management personnel to hold security clearances. Under these circumstances, there is no basis for finding that M&M was competitively prejudiced; we will not sustain a protest absent a showing of such prejudice. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

M&M further argues that TDSS should not have been awarded the contract because it lacks relevant past performance. This argument is without merit. Under the past performance factor, in accordance with Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iv), the solicitation specifically stated that firms lacking relevant past performance would receive a neutral/unknown confidence rating, and that such a rating would have no positive or negative evaluation significance. RFP at 18. Since TDSS lacks relevant experience, it properly received a neutral rating. Since the RFP stated that a neutral rating would have no negative effect on the evaluation, the agency properly determined that TDSS's neutral rating did not render the firm ineligible for award.

Finally, M&M alleges that the agency engaged in improper and unequal discussions when it informed the other offerors, but not M&M, that their proposed prices were higher or lower than the government estimate. Again, however, even if we agreed with M&M that the agency acted improperly, the agency's actions did not competitively harm the protester. In this regard, since M&M's final proposal price--\$638,444 (later reduced by the agency to \$626,667 due to a shortened performance period)--was lower than the government estimate (\$692,958), there is no reason to believe that being told where its price stood relative to the estimate would have led M&M to lower its price further, or otherwise to alter its offer to its competitive advantage. Consequently, we find no competitive prejudice.

The protest is denied.

Anthony H. Gamboa
General Counsel