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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: Head Inc.

File: B-299523

Date: June 8, 2007

Richard D. Lieberman, Esq., and Nicole S. Allen, Esq., McCarthy, Sweeney & Harkaway, PC, for the protester.

James H. Roberts, III, Esq., and Carrol H. Kinsey, Jr., Esq., Van Scoyoc Kelly PLLC, for Hi-Way Paving, Inc., an intervenor.

Allen E. Sebastian, Esq., Department of the Army, for the agency.

Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to conduct meaningful discussions with protester by not raising concerns about what was, in essence, an alternate proposal to compress the construction schedule for this effort from 38 months to 11 months, with no supporting documentation, is denied where the protester offered the compressed construction schedule in a two-sentence response to the solicitation's call for "betterments," which were defined as components or systems that would exceed the solicitation's stated minimums, and the agency reasonably elected to view the response as inconsistent with the kind of improvements sought by the solicitation, and did not raise the matter during otherwise appropriate discussions, or consider it further in any way.

DECISION

Head Inc., protests the award of a contract to Hi-Way Paving, Inc., under request for proposals (RFP) No. W912QR-07-R-0005, issued by the Department of the Army, Army Corps of Engineers for airfield runway upgrades at Johnstown-Cambria Airport in Johnstown, Pennsylvania. Head argues that the agency failed to conduct meaningful discussions with the firm which resulted in an unreasonable price/technical tradeoff.

We deny the protest.

The RFP sought proposals for design-build construction services for airfield runway upgrades. The construction project was divided into a base requirement and six

option requirements, such as turnaround pads, fence upgrades, runway shoulders, and shoulder lighting. The RFP advised that the successful contractor would commence work within 10 days after receipt of the notice to proceed, and that the entire project must be completed not later than 1,140 calendar days after receipt of the notice to proceed. RFP at 4, 22.

The RFP provided for the award of a fixed-price contract, with a Historically Underutilized Business (HUB) Zone small business concern price evaluation preference, to the offeror whose proposal represented the “best value” to the government, all factors considered. The RFP listed, in descending order of importance, the following technical or non-price evaluation factors and subfactors: (1) experience (prime contractor experience and design team experience); (2) past performance (prime contractor past performance, design team past performance, and past performance on utilization of small businesses); and (3) management. Id. at 10-12. The RFP also provided that proposed prices would be evaluated for realism and reasonableness and stated that the technical or non-price evaluation factors when combined were equal to price. Id.

The RFP included detailed instructions for the preparation of technical and price proposals, and offerors were advised to prepare their proposals in sufficient detail to enable the agency to make an effective and equitable evaluation of the offeror’s experience, technical approach and management capabilities to successfully complete the project. Id. at 7. As it relates to this protest, the RFP advised that:

Requirements stated in this RFP are minimums. Innovative, creative or cost-saving proposals that meet or exceed the requirements are encouraged and will be rated accordingly. Any deviations from requirements should be clearly noted and justified in the proposal.

Id. In addition, offerors were informed that they could propose what the solicitation termed “betterments,” which were defined as “any component or system which exceeds the minimum requirements stated in the [RFP].” Id. at 23. With regard to price, the RFP required offerors to complete the solicitation’s price schedule which included separate line items for the base and option requirements. The RFP stated that each offeror’s proposed price would be evaluated based on the total prices proposed for the base requirements and all options. Id. at 4, 7. The RFP also stated that any “proposed betterments identified in the proposal are to be listed with a separate price included for each” but did not state how the proposed betterments would be evaluated. Id. at 8.

Five firms submitted initial proposals, including Head (a HUBZone small business concern) and Hi-Way Paving (a small business concern). Proposals were evaluated by the agency’s source selection evaluation board (SSEB) using adjectival ratings which were supported by narrative descriptions of the strengths, weaknesses, and deficiencies in each offeror’s proposal. The initial proposal submitted by Head was

evaluated technically as “good” overall, and had an evaluated total price of \$19,121,251.30;¹ Hi-Way Paving’s proposal was evaluated as “excellent” overall, and had an evaluated total price of \$18,039,000. There were no weaknesses or deficiencies identified for either of the proposals submitted by Head or Hi-Way Paving and the proposals of all five offerors were included in the competitive range. Agency Report (AR) exh. 11, SSEB’s Comparative Analysis Report, at 1-13; AR exh. 8, Contracting Officer’s Determination of the Competitive Range.

The agency then conducted written discussions with each offeror. In its letter to the protester, the agency stated: “Your price proposal exceeds the total amount of funds available for contract award. The funds available for this project are \$15,919,200. Please re-evaluate your price proposal to determine if there are areas that can be reduced while maintaining the quality of work.” AR exh. 10, Discussion Letter from Contracting Officer to Head (Dec. 11, 2006). In response, Head submitted a revised proposal with a total proposed price of \$18,400,473.55.² AR exh. 10, Head’s Revised Proposal (Dec. 15, 2006). Each of the other competitive range offerors, including Hi-Way Paving, received a written discussion question concerning their proposed prices, all of which exceeded the funds available. See AR exh. 9, Discussion Letter from Contracting Officer to Hi-Way Paving (Dec. 11, 2006); AR exh. 8, Contracting Officer’s Determination of the Competitive Range.

¹ Head’s initial proposal included two proposed betterments explained, in their entirety, as follows:

We propose to shorten the duration of the base bid to eleven (11) months in lieu of the thirty eight (38) months shown on the bid form. If this duration reduction is accepted our base bid price can be reduced to \$13,394,000.00.

Lighted portable runway closure crosses can be provided for the main runway at no additional cost.

AR exh. 5, Head’s Proposed Betterments. However, the protester’s proposal did not describe its approach to completing this project under a shorter construction schedule. The agency reports that the evaluators did not consider Head’s alternate lower price premised on a shorter construction duration because there was no supporting documentation explaining this betterment in its technical proposal.

² The protester’s revised proposal again included the proposed betterments, but lowered the price for its shorter construction schedule from \$13,237,566.20 to \$12,745,905.00. In addition, the revised proposed betterments also indicated that “[i]f the bid options are awarded, our duration would be twenty (20) months with our base bid remaining at \$12,745,905.00.” Id. Head’s Proposed Betterments, Rev. 1 (Dec. 15, 2006).

Final proposal revisions were requested, received and evaluated. Thereafter, the agency reopened discussions to incorporate new wage rates applicable to this solicitation. The final overall technical ratings and prices for the four offerors that remained in the competition were as follows:

| | Hi-Way Paving | Offeror A | Head ³ | Offeror B |
|--|------------------|------------------|-------------------|---------------------|
| Overall Rating | Excellent | Excellent | Good | Satisfactory |
| 1. Experience | Excellent | Excellent | Good | Satisfactory |
| Prime Contractor | Excellent | Excellent | Good | Satisfactory |
| Design Team | Good | Good | Excellent | Satisfactory |
| 2. Past Performance | Good | Excellent | Satisfactory | Good |
| Prime Contractor | Excellent | Excellent | Satisfactory | Good |
| Design Team | Satisfactory | Good | Good | Satisfactory |
| 3. Management Plan | Excellent | Good | Good | Satisfactory |
| 4. Price | | | | |
| Proposed | \$18,184,236.00 | \$21,992,600.00 | \$18,474,512.30 | \$18,524,377.48 |
| Evaluated (with HUBZone preference) | \$18,184,236.00 | \$24,191,860.00 | \$18,474,512.30 | \$20,376,815.23 |
| Government Estimate | \$21,329,865.00 | | | |

AR exh. 11, SSEB Comparative Analysis Report at 20-21, 23.

The contracting officer, as the source selection official (SSO), reviewed the SSEB's evaluations of each proposal and performed a price/technical tradeoff. The SSO noted that while Hi-Way Paving's and Offeror A's proposals had received the highest technical rating overall, Offeror A's price was substantially higher than the Hi-Way Paving price. The SSO concluded that nothing in Offeror A's proposal justified paying the price premium associated with Offeror A's proposal and determined that the proposal submitted by Hi-Way Paving represented the best value to the government. *Id.* exh 12, Source Selection Decision Document at 2-3. The agency awarded the contract to Hi-Way Paving and, after receiving a debriefing, Head filed this protest.

³ In its final price revision, Head proposed:

to shorten the duration of the base bid to eleven (11) months in lieu of the thirty-eight (38) months shown on the bid form. If this duration reduction is accepted our base bid price can be reduced from \$13,299,446.20 to \$12,807,785.00. If the bid options are awarded, our duration would be twenty (20) months with our base bid remaining at \$12,807,785.00.

AR exh. 10, Head's Proposed Betterments, Rev. 2 (Feb. 15, 2007).

Head argues that the agency failed to engage in meaningful discussions regarding the firm's price proposal. More specifically, the protester states that it learned during its debriefing that the firm's lower-priced proposed betterments were not considered by the agency because Head had not explained how it could achieve a shorter construction schedule. According to the protester, it was led to believe by the terms of the solicitation that the agency desired acceleration of the overall completion of the project.⁴ Head states that it was on this basis that the firm proposed the betterments which offered a shorter construction schedule with significant price reductions,⁵ and insists that the Corps was obligated to "inquire about Head's proposed betterments, either concerning its price, its reasoning, or any other aspect of Head's betterments proposal" when the agency realized that Head's proposed prices exceeded the funds available. Protest at 3; Protester's Comments at 2-6.

We disagree. In our view, Head's proposed betterment was not consistent with what the solicitation envisioned by this term. As mentioned above, the solicitation defined a betterment as "any component or system" that exceeds the minimum solicitation requirements. Head's offer to shorten the duration of this construction project (the base bid) from 38 months to 11 months was essentially an alternate proposal with no supporting information. In this regard, we think an offer to dramatically compress an agency's construction schedule is a significant matter that could not be considered without a thorough explanation of how the schedule compression would be accomplished.

Moreover, we note that the RFP specifically advised that offerors must provide detailed information in their proposals concerning technical approach and management capability to complete the construction project; the RFP also expressly stated that "any deviations" from the solicitation requirements--such as the construction schedule--should be justified in the offeror's proposal. RFP at 7. While the protester disputes that it was required to provide detailed information regarding

⁴ For example, the solicitation indicates that the project was selected to be fast track design-build. RFP at 23. The agency reports that fast tracking is a process by which the design-build contractor can begin initial construction activities in advance of 100-percent design completion, and that the process is not dependent on any offeror's proposed construction schedule. Agency Legal Memorandum, at 7 n.1.

⁵ Head also initially challenged the technical and past performance evaluation of the awardee's proposal. The Corps specifically responded to these protest allegations in the agency report, but in its comments the protester did not substantively respond to the agency's detailed rebuttal. Thus, we consider Head to have abandoned these protest bases and will not consider them further. International Marine Prods., Inc., B-296127, June 13, 2005, 2005 CPD ¶ 119 at 5 n.3; see Delco Indus. Textile Corp., B-292324, Aug. 8, 2003, 2003 CPD ¶ 141 at 3 n.2.

the achievability of its proposed shorter construction schedule, see Protester's Comments at 2 (solicitation "did not require or ask for such detail"), the protester does not demonstrate in any persuasive way that its interpretation of the solicitation's instruction provisions is reasonable.

Given the solicitation's requirement that offerors provide details regarding any deviations in their proposals, we think the agency reasonably declined to consider Head's alternate proposal--tendered in the guise of a proposed betterment, and with no supporting information. To the extent that Head thinks its alternate approach should have been addressed during discussions, we note that offerors bear the burden for failing to submit an adequately written proposal, and contracting agencies are not obligated to go in search of needed information which the offeror has omitted or failed to present. Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 8.

In any event, the record shows that the protester here submitted an acceptable proposal which received the second highest technical rating of "good" overall. In addition, Head's proposal--without considering the so-called betterment--had no weaknesses or deficiencies that kept Head's proposal from being fully acceptable, or from otherwise having a reasonable chance of being selected for award. As a result, we think the discussions that were held, which addressed only Head's detailed and supported proposal--as opposed to its unsupported alternate proposal--were reasonable. See Federal Acquisition Regulation § 15.306(d)(3); American States Utils. Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6; Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6.

The protest is denied.

Gary L. Kepplinger
General Counsel