



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Government Telecommunications, Inc.

File: B-299542.2

Date: June 21, 2007

John C. Person, Esq., Person & Craver LLP, for the protester.
Seth Binstock, Esq., Andrew J. Seff, Esq., and Ellen Rothschild, Esq., Social Security Administration, for the agency.
Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of proposal from competitive range is denied where agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

Government Telecommunications, Inc. (GTI) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. SSA-RFP-06-1031, issued by the Social Security Administration (SSA) for the agency's telephone systems replacement project (TSRP). GTI contends that the agency's evaluation of its proposal as well as the subsequent determination to exclude its proposal from the competitive range were improper.

We deny the protest.

BACKGROUND

SSA is a federal government agency staffed by over 65,000 employees. In addition to the agency's headquarters, SSA has a field organization consisting of 10 regional offices, 6 program service centers, and more than 1,500 field offices to provide services at the local level. The TSRP represents SSA's replacement of its current telephone systems with an enterprise voice over internet protocol (VoIP) telephone solution, to support the agency's current and future requirements and the transition to internet protocol (IP) telephone systems. In general terms, the statement of work here required the contractor to provide all hardware, software, and services

necessary to engineer, install, and integrate the TSRP solutions with SSA's government-furnished equipment and to remove the legacy telephone systems. Statement of Work (SOW) § C.1.

The RFP, issued on August 10, 2006, contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base year together with nine 1-year options. The RFP identified five evaluation factors: technical approach; past performance; key personnel qualifications; management approach; and price. The solicitation stated that the four technical/non-price factors were listed in descending order of importance and, when combined, were more important than price. Award was to be made to the responsible offeror whose proposal was determined to be the "best value" to the government all factors considered. RFP § M.1.

The RFP contained detailed instructions regarding the submission of proposals.¹ Specifically, the technical approach submission was required to demonstrate the offeror's understanding of the solicitation's technical requirements and thoroughly describe the TSRP solution being proposed; the technical approach narrative was also to be sufficiently specific, detailed, and complete so as to clearly and fully demonstrate the techniques and procedures the offeror would employ to meet all SOW requirements. Further, the RFP required an offeror's technical approach to include the operational, performance, and functional details of specific system capability(s) and/or features as explicitly stated in the SOW. Offerors merely proposing to provide supplies and services in accordance with the solicitation would not be eligible for award. RFP §§ L.2, L.2.1.

The RFP informed offerors that SSA intended to evaluate proposals and award a contract without conducting discussions; however, the agency also reserved the right to conduct discussions if later determined by the contracting officer to be necessary. RFP §§ L.1, L.2.6.

Four offerors, including GTI, submitted proposals by the November 9 closing date. An agency technical evaluation committee (TEC) evaluated offerors' proposals as to the technical factors using an adjectival rating system that was set forth in the RFP: excellent; good; acceptable; marginal; and unsatisfactory. The TEC's evaluation ratings of offerors' proposals were as follows:

¹ The RFP required each proposal to consist of three separate volumes--technical approach, business factors, and price factors. The technical approach volume was, in turn, to be structured as follows: 1) TSRP solution architecture and configuration; 2) TSRP solution features; 3) TSRP solution operations and management capability; and 4) TSRP system supplementary features. The solicitation also set forth tables of requirements (cross-referenced to sections of the SOW) that offerors' proposals were to explicitly address. RFP § L.2.1.

Factor	Offeror A	Offeror B	Offeror C	GTI
Technical Approach	Marginal	Good	Marginal	Unsatisfactory
Past Performance	Good	Good	Good	Acceptable
Key Personnel Qualifications	Acceptable	Acceptable	Acceptable	Acceptable
Management Approach	Marginal	Acceptable	Marginal	Marginal
Technical Overall	Marginal	Good	Marginal	Unsatisfactory
Evaluated Price	\$297,094,538	\$285,651,653	\$296,494,909	\$423,313,419

AR, Tab 6, TEC Report, at 45; Tab 7, Competitive Range Determination, at 16, 23.

The TEC identified numerous weaknesses and deficiencies in GTI's proposal as to technical approach. Specifically, the evaluators found that many of the systems and software proposed in GTI's solution were not currently available, and that the late availability dates proposed by the offeror represented significant risk to the agency.² The TEC also found GTI's proposed IP telephones were not currently available in the United States, and did not fully meet all the feature requirements identified in the solicitation.³ Further, in the area of TSRP solution operations and management capability, the TEC found that GTI's proposal did not provide details on many requirements (e.g., missing information on how automatic call distribution equipment would be monitored and data archived), ignored or omitted information on many requirements (e.g., no evidence or discussion concerning many of the

² The TEC cited, for example, that GTI's proposed TSRP technical solution required additional development activity in the areas of softphones, management information system, service observation, in-phone paging, and multi-conferencing, in order to meet the SOW requirements. The evaluators also noted that GTI's proposal did not include a clear timetable for these development activities, so the exact dates when these features would be implemented and operational were undefined. Id., Tab 6, TEC Report, at 13-14.

³ For example, the TEC found that GTI's proposal did not address the SOW minimum voice service performance parameters when encryption capability was invoked, did not indicate a built-in wall mount unit (or wall mount kit availability) for its proposed IP telephone, stated that the intercom in-phone paging requirement would be available in a "future release," did not address the requirements for a non-locking hold button or for station-to-station calling with abbreviated dialing, and did not support key features such as call park, direct call pick-up, and in-phone paging. Id. at 14.

maintenance requirements in the management information area), or merely “echoed back” text from the solicitation (e.g., the voice network operations center requirement). The TEC concluded that the weaknesses and deficiencies in GTI’s technical approach were such that it failed to meet the performance and capability standards set forth in the solicitation and warranted a rating of unsatisfactory. Id., Tab 6, TEC Report, at 13-16, Tab 5, TEC Consensus Summary of GTI, at 1-18.

The contracting officer subsequently decided that discussions with offerors were necessary, and established a competitive range consisting of the highest-rated, lowest-priced proposals. The agency eliminated GTI’s proposal from the competitive range based on its determination that the firm’s proposal had numerous significant weaknesses that constituted material failures in meeting the agency’s requirements, in areas that increased performance risk to an unacceptable level. The contracting officer also believed that the weaknesses in GTI’s proposal were ones that could not be addressed unless major portions of its proposal were rewritten. The agency also considered the fact that GTI’s evaluated price was more than one-third higher than those of the other offerors, and that while some reduction in GTI’s total price might be gained through negotiations, any such reduction likely would be in proportion to reductions that could be expected from the other offerors, thereby not affecting the comparative price difference between proposals. Id., Tab 7, Competitive Range Determination, at 25-26. This protest followed.

DISCUSSION

Where, as here, a protest challenges an agency’s evaluation and exclusion of a proposal from a competitive range, we first review the propriety of the agency’s evaluation of the proposal, and then turn to the agency’s competitive range determination. Americom Gov’t Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4. In reviewing such protests, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency’s judgment was reasonable and in accordance with the terms of the solicitation and applicable procurement statutes and regulations. Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 4. An offeror’s mere disagreement with the agency’s evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

As explained in detail below, based upon our review of the record, SSA’s evaluation of GTI’s proposal and the subsequent exclusion of GTI’s proposal from the competitive range were reasonable. The record reflects that GTI’s technical proposal was downgraded in large part because the information provided either parroted back in whole or in part the RFP’s requirements, lacked sufficient information and detail for the agency to determine that GTI would comply with the RFP’s requirements, and, in various instances, indicated noncompliance with material requirements of the solicitation. Although we do not here specifically address all of the protester’s arguments about the evaluation of its proposal and

exclusion from the competitive range, we have fully considered all of them and find that they afford no basis to question the agency's competitive range decision.

GTI argues that the TEC's determination that its proposed IP telephones were not currently available in the United States was improper.⁴ The protester contends that its proposal made no representation with respect to the availability dates for its OpenStage telephones,⁵ and, as a result, the agency evaluators could not reasonably conclude that GTI's proposed telephones were unavailable without first confirming the matter with either GTI or the telephone's manufacturer. Comments, May 14, 2007, at 9.

GTI's argument here reflects a fundamental misunderstanding of the proposal process. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows for a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Here, since it was GTI's responsibility to establish the timely availability of its proposed IP telephones--not, as the protester argues, the evaluators' responsibility to establish unavailability--and GTI admittedly failed to do so, we find the agency's evaluation to be entirely reasonable.

GTI also disputes the TEC's determination that many of its proposed systems and software were not currently available and would require additional development activity to meet the SOW requirements. The protester states, for example, that while offering an in-phone paging requirement was not planned by the telephone manufacturer, the feature would be delivered according to the necessary schedule upon contract award. Similarly, with regard to the softphone requirement,⁶ GTI

⁴ GTI proposed the use of OpenStage session initiation protocol (SIP) telephones, manufactured by Siemens Corp. AR, Tab 4, GTI's Proposal, Vol. I, Technical Approach, at 18.

⁵ GTI explains that the proposed OpenStage telephones were in a pre-release phase with select customers and that, for competitive reasons, the phone's manufacturer did not announce the availability of the proposed equipment (or make detailed specifications of the equipment available) until a predetermined worldwide launch announcement. Comments, May 14, 2007, at 9.

⁶ The term "softphone" refers to the telephone equipment and solution for designated users that require assistive technology, so as to comply with the accessibility standards for individuals with disabilities imposed by section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d (2000), and its implementing regulations.

contends that while its proposal could have been a “little more clear,” it did state that GTI would comply with the SOW requirements. Comments, May 14, 2007, at 9-10.

In its proposal, while GTI agreed to provide a local in-phone paging system capability at all agency sites, it also stated that “[t]his in-phone paging capability will be available in a future upgrade release for the OpenStage SIP phones.” AR, Tab 4, GTI’s Proposal, Vol. I, Technical Approach, at 132-33. Likewise, the offeror’s proposal stated that

GTI will comply with the softphone functions and requirements of [SOW] Section C.4.2.2. An interface will be designed that will work in conjunction with the proposed HiPath 8000 [enterprise communications systems platform]. This application will be developed in compliance with published Assistive Technology standards

Id. at 87. As the quoted language makes clear, GTI’s proposal in these areas conceded that the required telephone features were not currently available or would require development. In view of the conditional nature of the representations in the offeror’s proposal, the TEC’s determination that many of the GTI’s proposed systems and software were not currently available and would require additional development activity clearly was reasonable.

GTI also contends that, given the ratings assigned its proposal under the individual technical factors, it was wholly inconsistent for SSA to assign the proposal an overall technical rating of unsatisfactory. Analogizing to “school grading,” GTI essentially argues that its overall evaluation rating should be based upon a straight average of the individual ratings received.⁷ Protest, Apr. 2, 2007, at 6. We find the agency’s decision to rate GTI’s proposal as technically unsatisfactory overall was reasonable and consistent with the stated evaluation criteria.

As a preliminary matter, GTI ignores the fact that the technical evaluation factors here were not of equal importance. Rather, as set forth above, the RFP expressly established that the technical factors were listed in descending order of importance and that technical approach, where GTI’s proposal was found to be unsatisfactory, was the technical factor of greatest importance.⁸ Moreover, where an agency

⁷ Using the protester’s analogy, GTI’s proposal here received “grades” of “F”, two “C’s”, and a “D” for the technical approach, past performance, key personnel qualifications, and management approach factors, respectively, and an “F” overall. AR, Tab 7, Competitive Range Determination, at 16.

⁸ Likewise, GTI’s assertion that SSA engaged in disparate treatment by “rounding up” Offeror B’s individual evaluation ratings as part of the firm’s overall technical rating (i.e., two “goods” and two “acceptables” resulted in an overall technical rating of “good”) but failed to do the same, or even employ a straight average of the individual
(continued...)

reasonably determines that an offeror's proposal is unacceptable as to any one evaluation criterion for failing to conform to material solicitation requirements, it is also reasonable for the agency to determine that the proposal is unacceptable overall. See Stewart Distributions, B-298975, Jan. 17, 2007, 2007 CPD ¶ 27 at 3-4; National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. There is simply no requirement, as GTI argues, that an agency's overall rating of an offeror's proposal be a straight average of the individual factor ratings where, as here, the proposal fails to conform to material solicitation requirements. As the agency reasonably determined that GTI's proposal was unsatisfactory as to technical approach--the most important technical factor--for failing to conform to material RFP terms, SSA's decision to rate GTI's proposal as technically unsatisfactory overall also was reasonable.

GTI also protests that SSA improperly failed to seek clarifications regarding certain technical aspects of its proposal prior to the competitive range determination. The protester argues that the alleged deficiencies found in its proposal related primarily to the TEC's lack of understanding of GTI's technical offering. In such situations, GTI contends, it is incumbent on the agency to seek clarification from the offeror prior to making the competitive range determination.⁹

SSA argues that the deficiencies and significant weaknesses in GTI's proposal were such that they exceeded the permissible scope of clarifications. Further, SSA contends, GTI fails to identify any requirement that the agency provide the offeror with the opportunity to clarify its proposal prior to making the competitive range determination. We agree on both counts.

Federal Acquisition Regulation (FAR) § 15.306 describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated

(...continued)

evaluation ratings, for GTI, Comments, May 14, 2007, at 8, is also premised on the protester's disregard of the relative weightings of the technical evaluation factors.

⁹ In support of its position, the protester argues that it cannot be charged with knowledge of the level of sophistication of the evaluation team and should not be penalized by having its proposal excluded from the competitive range simply because one or more of the agency evaluators did not understand the offeror's proposal. Protest, Apr. 2, 2007, at 3-4. The premise of this argument is flawed; there is no support in the record for what is in essence a challenge by GTI to the agency evaluators' competence. To the contrary, the record shows that the evaluators clearly understood the significant problems that existed with GTI's proposal. GTI again misunderstands the parties' relative obligations in this regard; it was GTI's responsibility in the first instance to clearly demonstrate compliance with the solicitation requirements in its proposal. It failed in this duty.

procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors.¹⁰ FAR § 15.306(a); Satellite Servs., Inc., B-295866; B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. By contrast, discussions—which are to occur after establishment of the competitive range—involve the agency indicating to each offeror the significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to materially enhance the proposal’s potential for award. FAR § 15.306(d)(3). The “acid test” for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to modify its proposal. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 11; Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 7.

As noted above, the informational deficiencies in GTI’s technical proposal were significant ones, such that curing them would have involved material changes to the offeror’s proposal. Accordingly, such an exchange would have constituted discussions, not clarifications. Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 8; Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5.

In any event, even assuming, as the protester contends, that GTI could have resolved the many informational deficiencies in its proposal by means of clarifications, whether to seek clarifications is a discretionary decision on the part of the contracting agency, not a right that the offeror possesses; any decision not to seek clarifications here clearly was well within the agency’s discretion.¹¹ Satellite Servs., Inc., supra.

¹⁰ Similarly, communications are limited exchanges between the agency and offerors after receipt of proposals leading to the establishment of the competitive range. An agency is required to hold communications with offerors whose past performance information is the determining factor preventing their proposals from being placed in the competitive range; otherwise, an agency may, but is not required to, engage in communications with offerors whose exclusion from, or inclusion in, the competitive range is uncertain. FAR § 15.306(b)(1); Americom Gov’t Servs., Inc., supra at 6. As with clarifications, communications are not to be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. FAR § 15.306(b)(2).

¹¹ GTI also argues that SSA’s decision to exclude its proposal from the competitive range involved disparate treatment, based on the agency’s expressed willingness to seek technical revisions from Offerors A and C as part of the post-competitive range discussions process but unwillingness to seek technical revisions from GTI prior to making the competitive range determination. Comments, May 14, 2007, at 8. We find
(continued...)

GTI also protests that SSA's decision to exclude its proposal from the competitive range was unreasonable. The protester argues that a recognized basis for the establishment of a competitive range is where there is a break or gap in the offerors' evaluation scores. GTI contends that no evaluation scoring gap or break existed here between its proposal and those of Offerors A and C--that the differences between the technical ratings of Offerors A and C and itself were "infinitesimal"--such that SSA's decision to include these offerors' proposals in the competitive range also mandated the inclusion of GTI's proposal. Comments, May 14, 2007, at 7. We disagree.

Contracting agencies are not required to retain a proposal in a 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. FAR § 15.306(c)(1); SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5-6. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. CMC & Maint., Inc., B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. Proposals with significant informational deficiencies may also be excluded, whether the deficiencies are attributable to omitted or merely inadequate information addressing fundamental factors. Wahkontah Servs., Inc., supra. While an agency may determine whether a natural break or gap exists in offerors' merit ratings as part of its competitive range determination, it is the competitive range procedures published in the FAR that set the standard for establishing such ranges. See Wilson 5 Serv. Co., Inc., B-285343.2, B-285343.3, Oct. 10, 2000, 2000 CPD ¶ 157 at 4.

Contrary to GTI's representations, the differences between its technical merit ratings and those of Offerors A and C were in fact substantial. The agency reasonably found that while the technical proposals of Offerors A and C each had a number of weaknesses and areas requiring clarification, the shortcomings were ones that could be readily addressed through proposal revisions. AR, Tab 7, Competitive Range Determination, at 25. By contrast, as detailed above, GTI's technical proposal had numerous significant weaknesses that constituted material failures in meeting the government's requirements, and the deficiencies reasonably could not be addressed without major proposal revisions. Additionally, the protester fails to mention the significant price difference (i.e., more than one-third higher) that existed between its proposal and those of Offerors A and C. Quite simply, GTI's assertion that no evaluation rating gap or break existed between its proposal and those of Offerors A and C is groundless.

(...continued)

this argument to be without merit as it is based on comparison of the agency's actions before, with those taken after, the competitive range was established.

More importantly, on this record, there is simply no basis to conclude that the agency was required to find that GTI's lowest-technically rated, highest-priced proposal was among the most highly rated, or that the proposal had any realistic chance of being selection for award. GTI's proposal contained numerous informational deficiencies and other instances of material technical noncompliance which provided a reasonable basis for the agency to exclude the proposal from the competitive range.¹²

The protest is denied.

Gary L. Kepplinger
General Counsel

¹² GTI also complains that SSA failed to conduct a proper debriefing. Protest, Apr. 2, 2007, at 2-3. The agency specifically addressed this issue in its report to our Office, discussing how the information provided at the debriefing was consistent with applicable regulatory requirements. AR, May 3, 2007, at 26-29. As GTI's comments offered no rebuttal to the agency position here, see Comments, May 14, 2007, at 6-10, we regard this argument as abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4. In any event, this allegation concerns a procedural matter that does not bear on the validity of the contract award. The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2.