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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: Decypher Technologies Ltd.

File: B-405511.2

Date: November 18, 2011

Johnathan M. Bailey, Esq., and Christopher G. Burwell, Esq., Bailey & Bailey, P.C., for the protester.

Maj. John C. Dohn II, Department of the Army, for the agency.

Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rejected protester's proposal as unacceptable where the proposal stated assumptions that were contrary to the requirements in the RFP and failed to adequately describe a significant aspect of the protester's approach.

DECISION

Decypher Technologies Ltd., of San Antonio, Texas, a small business, protests the rejection of its proposal as unacceptable, and the subsequent award of contracts to eight firms,¹ by the Department of the Army under request for proposals (RFP) No. W911S0-11-R-0011 for training services to support the distributed learning program at the Army Training and Doctrine Command schools. Decypher argues that its proposal was misevaluated.

We deny the protest.

¹ The eight awardees are The Cogar Group, LTD, of Burke, Virginia; KeyBridge Technologies, Inc., of Oklahoma City, Oklahoma; Craig Technical Consulting Inc., doing business as Craig Technologies, of Melbourne, Florida; Information Experts, Inc., of Reston, Virginia; Delan Associates, Inc., of Freeport, New York; Nangwik Services, LLC, of Jacksonville, Florida; The Angelo Group, Inc., of Martinez, Georgia; and Akima Infrastructure Services, LLC, of Anchorage, Alaska.

BACKGROUND

The Army issued the RFP on April 11, 2010, as a set-aside under the Small Business Administration's 8(a) program, requesting commercial item proposals to provide services and products for the Combined Arms Products for Distributed Learning (CAPDL) program. The Army intended to award multiple indefinite-delivery/indefinite-quantity (IDIQ) contracts, under which it will issue task orders to "provide continued training tools and deliverables which will contribute to the development of distributed learning products." Agency Report (AR) at 2. The RFP did not limit how many contracts the Army would award, but it specified a ceiling value for all contracts of \$371 million. RFP at 3.

The RFP contained a detailed performance work statement (PWS) that set forth various requirements for courseware and other deliverables under the contract. Among other things, vendors were required to "protect and return" government-furnished information (GFI). RFP at 62. The RFP informed offerors that unless a task order specified differently, the Army would supply GFI with the solicitation or within 15 business days following the issuance of a task order. Within 30 days of the issuance of a task order, the contractor was then required to identify any of the GFI that was unavailable, inadequate, or not current. RFP at 62, 65-66.

The PWS also provided that the contractor was required to submit its training and courseware products for review by the Army, and make changes as necessary at no cost to the government. RFP at 61. The government review times were to be specified in each task order issued under the IDIQ contract. RFP at 65. In a sample task order (to which vendor responses were to be evaluated here), the RFP specified that the government reviews would be completed "within 10 working days for incremental deliverables . . . and 30 working days for the final courseware delivery." RFP at 162.

The PWS also required offerors to provide an "online review system," which was to provide reviewers with the ability to review courseware, submit comments to the offeror, and resolve those comments. RFP at 59, 84. This online review system was to be the "primary method for review of visual and audio products." RFP at 68. Detailed requirements for the functionality and capabilities of the online review system were set forth in the PWS. RFP at 84-86.

The RFP specified that the Army would award IDIQ contracts to offerors with the lowest-priced technically acceptable proposals, based on an evaluation of technical (which included the vendor's response to a sample task order), past performance, and price factors. RFP at 16, 108. The RFP directed offerors to "identify and explain any exceptions, deviations, or assumptions applicable to this RFP," and it expressly warned offerors that taking exception to the requirements could result in

the proposal being rejected as unacceptable.² The RFP also directed offerors to obtain any needed clarifications of the solicitation requirements before the closing time for submission of proposals. RFP at 116. The RFP stated that in order to be rated acceptable, and thus remain in consideration for award, a proposal could not contain any significant weaknesses or deficiencies. RFP at 109.

The Army received timely proposals from Decypher and 17 other 8(a) program small businesses by the May 16, 2011 due date. AR, Tab 13, Combined Prenegotiation Objective Memorandum/Price Negotiation Memorandum, at 12.

In Decypher's proposal, the firm identified several assumptions that formed the bases of its technical approach.³ AR, Tab 10, Decypher Proposal, Vol. II, Tab 1,⁴ at 1. One of Decypher's assumptions was that, at the time of task order issuance, the GFI would be "finalized" and "stable"--that is, it would not change during course development. Id. Decypher also stated that the GFI "will include, but not [be] limited to" the following list:

- [DELETED]
- [DELETED]
- [DELETED]
- [DELETED]
- [DELETED]
- [DELETED]
- [DELETED]

Id. Decypher's proposal stated that, if the Army's GFI did not adhere to these assumptions, there would be "an impact to project scope, cost, and schedule." Id.

Decypher next stated an assumption that government reviews of the firm's deliverables would be complete within [DELETED] days. Id. at 2. Decypher stated that, after [DELETED] days, the firm would consider the deliverables approved, and that longer periods of review would "result in a cost and schedule impact." Id.

² The RFP stated that the Army intended to award contracts without holding discussions. RFP at 15 (incorporating Federal Acquisition Regulation § 52.212-1(g)) & 112.

³ Decypher also identified one exception--it requested inclusion of a [DELETED]. The Army deemed this exception acceptable, and it is not at issue in this protest. AR, Tab 10, Decypher Proposal, Vol. II, Tab 1, at 1; Protest at 31; Protester's Comments at 3.

⁴ Although Decypher's proposal was designated by the Army as Tab 10 of the agency report, the proposal itself had been subdivided by Decypher into tabs numbered 1 through 5.

After stating its proposal assumptions, Decypher continued with its proposal responses to the various solicitation requirements. When discussing the online review system, the firm stated it would establish a “[DELETED]” for each task order. AR, Tab 10, Decypher Proposal, Vol. II, Tab 4, at 52. Decypher provided a table that listed seven general features of its online review system and associated benefits, such as “[DELETED].” Id.

During the evaluation of technical proposals, the evaluators considered the assumptions stated in Decypher’s proposal, found them unacceptable because they were inconsistent with the Army’s requirements, and assigned three weaknesses (two of which were significant) and a deficiency to the proposal as a result. One significant weakness pertained to Decypher’s assumption that the Army would review the firm’s deliverables within [DELETED] days. The evaluators found that this assumption was unacceptable because the firm was “dictating the terms of the contract,” rather than permitting the Army to establish review times in each task order as provided in the RFP.⁵ AR, Tab 11, Decypher Technical Evaluation, at 1.

The evaluators identified two weaknesses associated with Decypher’s assumption listing GFI that the firm assumed would be available at the time of task order issuance. As a significant weakness, the evaluators explained that there would not always be complete GFI for offerors to rely on in providing training solutions. Id. at 2. The other weakness was associated with Decypher’s assumption that GFI would be provided at the time of task order issuance, and would not thereafter change. The evaluators found that this assumption was inconsistent with the PWS requirement that GFI could be provided within 15 days after task order issuance, see RFP at 62, and, furthermore, GFI could be expected to change during development of courseware to account for the latest lessons learned from the field. AR, Tab 11, Decypher Technical Evaluation, at 1-2.

In addition, the evaluators assessed a deficiency to Decypher’s proposal because the description of the online review system did not show that the system would meet the Army’s requirements. The agency found that Decypher’s table simply restated the requirements in the RFP, but did not sufficiently explain “how” the firm intended to meet the requirements. The evaluators explained that Decypher’s inadequate response posed a risk that the firm would not provide a suitable online review system, which would delay the Army’s ability to review the firm’s courseware. Id. at 2.

Decypher’s proposal was rated low risk under the past performance factor, and its evaluated price of \$115.8 million was deemed reasonable. AR, Tab 13, Combined

⁵ The assumption is also inconsistent with the sample task order, which stated that government review would be completed within 10 days for certain deliverables and 30 days for courseware deliverables. RFP at 162.

Prenegotiation Objective Memorandum/Price Negotiation Memorandum, at 18. However, due to the weaknesses and deficiency associated with the firm's technical approach, Decypher's proposal was rated unacceptable under the technical factor and, thus, was not selected for award. AR, Tab 14, Source Selection Decision, at 8.

The Army awarded contracts to eight acceptable proposals that offered the lowest evaluated prices,⁶ which were as follows:

| Offeror Name | Evaluated Price (millions) |
|------------------------------------|----------------------------|
| Cogar Group, LTD | \$155.3 |
| KeyBridge Technologies, Inc. | \$166.5 |
| Craig Technologies | \$174.4 |
| Information Experts, Inc. | \$202.4 |
| Delan Associates, Inc. | \$222.0 |
| Nangwik Services, LLC | \$245.0 |
| Angelo Group, Inc. | \$257.4 |
| Akima Infrastructure Services, LLC | \$262.5 |

AR, Tab 15, Debriefing Letter to Decypher, at 1. After receiving a debriefing, Decypher filed this protest.

DISCUSSION

Decypher challenges the weaknesses and deficiency assigned to its proposal. In general terms, Decypher argues that the Army unreasonably interpreted expressed assumptions as exceptions, and argues that its assumptions do not render the proposal unacceptable.⁷ Protest at 28-31. Decypher maintains that, based on its experience as an incumbent contractor providing these services to the Army, the firm knows that most of the orders placed by the agency have fallen within its

⁶ The evaluated prices included the base year, the four option year periods, and a price for the option to extend services (pursuant to FAR § 52.217-8), which was established for purposes of the evaluation by calculating the cost of 6 months at the final option year price. AR, Tab 16-17, E-Mails from Army to ITA, Aug. 5, 2011, at 1.

⁷ To the extent that Decypher also argues that it was impossible to submit a proposal without making assumptions as it did, its argument amounts to an untimely challenge to the terms of the RFP as defectively ambiguous. See 4 C.F.R. § 21.1(a)(2) (2011) (protests challenging terms of the RFP must be filed before the due date for proposals); see also Vanderbilt Shirt Co., B-236016, Oct. 10, 1989, 89-2 CPD ¶ 333 at 3 (protest is untimely where any ambiguity over solicitation term to which protester took exception was apparent at the time that proposals were due).

assumptions. E.g., Protest at 28 (“historically in excess of 97% of issued task orders . . . specified a 10 day review period”). Additionally, Decypher argues that the deficiency assigned to its proposal is unreasonable because the firm adequately described its online review system. Comments at 5. Therefore, Decypher maintains that the agency should have considered its proposal to be acceptable and awarded the firm a contract.

The Army argues that Decypher’s proposal was evaluated reasonably under the requirements of the RFP, that the proposal assumptions were contrary to the requirements of the RFP, and that the proposal was deficient for failing to show that the firm would provide a suitable online review system. AR at 11-15. Therefore, the Army argues, Decypher’s proposal was properly rated unacceptable. Id.

It is well settled that a proposal that fails to conform to a solicitation's requirements cannot form the basis for an award. Government Acquisitions, Inc., B-401048 et al.; May 4, 2009, 2009 CPD ¶ 137 at 6-7 (where proposal made assumptions that were contrary to solicitation terms, agency properly rejected it as unacceptable); Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 6 (agency properly rejected proposal that stated assumptions contrary to solicitation terms without allowing offeror to clarify its assumptions). Where a protest challenges an agency's technical evaluation, this Office will review the evaluation record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with an agency's judgments does not render the evaluation unreasonable. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

We agree with the Army that Decypher’s proposal was based on assumptions that were inconsistent with the terms of the RFP, and that the proposal lacked required information on the online review system. We therefore find that the evaluation of Decypher’s proposal as unacceptable was reasonable.

With respect to Decypher’s assumptions, the Army’s evaluation properly assessed weaknesses because the stated assumptions were contrary to the requirements of the RFP. In particular, although the RFP provided for government review times to be established in each task order, and (for example) the sample task order expressly provided for both 10-day and 30-day review periods, see RFP at 65, 162, Decypher’s assumption contradicted this. Decypher conditioned its pricing and timely performance on the assumption that government reviews would take a maximum of [**DELETED**] days. AR, Tab 10, Decypher Proposal, Vol. II, Tab 1, at 2.

Similarly, the RFP provided that the Army could provide GFI after issuance of the task order request (up to 15 days later), and the vendor was then required to identify any shortcomings in the GFI. See RFP at 62, 65. Nevertheless, Decypher based its price on conflicting assumptions that a specific list of GFI would be available at the

time that the Army issued a task order, and that the GFI could not be changed without affecting Decypher's price and performance. AR, Tab 10, Decypher Proposal, Vol. II, Tab 1, at 1.

Finally, we agree with the Army that Decypher's description of an online review system appeared to paraphrase the requirements from the RFP, rather than illustrate an approach to the requirements (such as by showing the operation of the firm's system). Although the RFP indicated that an online review system was an important element of the offeror's performance and thus should have been addressed specifically, see RFP at 59, 68, 84-86, Decypher's list of features and benefits did not describe an actual online system, or show the firm's approach to adapting an existing system to the requirements of the RFP. Accordingly, we find that the assessment of a deficiency was reasonable.

Since Decypher's proposal made assumptions that were inconsistent with the requirements of the RFP, and the proposal was also deficient in its explanation of its online review system, which was a significant element needed for performance, the Army properly rejected Decypher's proposal as unacceptable.

The protest is denied.

Lynn H. Gibson
General Counsel