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Decision

Matter of: Computer Information Specialist, Inc.

File: B-293049; B-293049.2

Date: January 23, 2004

Kevin P. Mullen, Esq., and David E. Fletcher, Esq., Piper, Rudnick, for the protester. Mike Colvin, Department of Health and Human Services, for the agency. Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated proposals is sustained where record shows that agency's evaluation conclusions with respect to protester's proposal were either unrelated to the evaluation criteria or without a factual basis, and agency failed to note two deficiencies in awardee's proposal.

DECISION

Computer Information Specialist, Inc. (CIS) protests the award of a contract to Open Technology Group, Inc. (OTG) under request for proposals (RFP) No. NLM-03-101/SAN, issued by National Library of Medicine, National Institutes of Health (NIH) to acquire telecommunications support services at the agency's Bethesda, Maryland campus. CIS maintains that the agency misevaluated proposals and made an unreasonable source selection decision.

We sustain the protest.

The solicitation contemplated the award of a requirements contract with fixed hourly rates to perform telecommunications support services for a base year, with four 1-year options. The RFP advised that the agency intended to make award on a "best value" basis, with several non-price factors, collectively, being significantly more important than price. RFP at 66. The non-price criteria (and their point values, out of 100 possible points) were: qualifications and availability of personnel (30 points), past performance (30 points), technical competence (20 points), and management approach (20 points). RFP at 66-67. For pricing purposes, offerors were to submit fully-loaded, fixed hourly rates for various labor categories, RFP at

62; evaluated prices were derived by multiplying the proposed hourly rates by estimated quantities stated in the solicitation. RFP at 51.

The agency received numerous proposals and, after an initial evaluation, established a competitive range of four firms, including the protester and the awardee. Agency Report (AR), exh. 6, at 1-3. The agency conducted discussions with the competitive range offerors and solicited and obtained revised proposals. The final evaluation results were as follows:

Offeror	Technical Score	Estimated Price	Acceptability
OTG	[deleted]	[deleted]	[deleted]
Offeror A	[deleted]	[deleted]	[deleted]
Offeror B	[deleted]	[deleted]	[deleted]
CIS	[deleted]	[deleted]	[deleted]

AR, exh. 18 at 2. On the basis of these evaluation results, the agency made award to OTG, the firm submitting what the agency deemed the highest-ranked, lowest-priced proposal. Following a debriefing, CIS filed this protest in our Office, asserting that the agency misevaluated both its and the awardee's proposals.

In reviewing protests against an agency's evaluation of proposals, we do not reevaluate the proposals. Rather, we consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2. On the basis of the record here, we find the agency's evaluation conclusions with respect to both proposals unreasonable.

CIS

The evaluation record is limited, consisting solely of narrative materials prepared by the evaluators. Of five evaluators, four prepared only cursory narrative comments to support their scoring of the initial or revised CIS proposals. The comments that were prepared during the initial evaluation criticized the proposal principally for not offering personnel that met all of the solicitation's minimum personnel experience requirements.¹ This was brought to CIS's attention during discussions, and CIS revised its proposal in this area. CIS asserts that it cured this deficiency, and that it therefore was unreasonable for the final evaluation to reflect a downgrading of the proposal in the area of personnel qualifications and availability.

¹ The RFP divided the contract requirements into seven task areas, six of which included experience requirements, expressed in terms of years of experience, for the various personnel categories. For example, under task area 1, program manager, the proposed program manager was required to have at least 5 years of relevant experience. RFP, Statement of Work (SOW), at 4.

We agree with CIS. In evaluating the revised CIS proposal, four of the five evaluators again prepared only cursory narrative materials. In terms of scoring, three of these four evaluators raised CIS's score by [deleted] points; the agency's final consensus technical evaluation report states that two of the three evaluators increased their scores based on their conclusion that the CIS proposal now met the personnel experience requirements, and that the third increased his score based on CIS's providing "additional information" in its revised proposal. AR, exh. 7, at 5-6. Among these four evaluators, two assigned a final overall technical score of [deleted] points and two assigned a score of [deleted] points. Id. at 7.

The fifth evaluator scored CIS's revised proposal dramatically differently, reducing CIS's score from [deleted] total points initially to [deleted] points on reevaluation. Unlike the other four evaluators, he prepared extensive narrative materials during his rescoring of the proposal, AR, exh. 4, at 25-26, and his unedited comments were ultimately incorporated into the final consensus technical evaluation report, along with a summary of the other evaluators' limited comments. AR, exh. 7, at 5. The agency's source selection decision document, AR, exh. 18, does not reflect any critical or independent analysis or evaluation of the proposals by the source selection official (SSO); instead, it relies entirely upon the numeric scores for purposes of the agency's source selection decision. This being the case, the comments of the fifth evaluator regarding deficiencies in CIS's proposal represent the sole support in the evaluation record for the relatively low ranking of CIS's revised proposal. This is problematic for the agency because we find that the conclusions expressed by the fifth evaluator are unreasonable.

The first paragraph of the fifth evaluator's comments states as follows:

I was dismayed and unfavorably impressed with both the tone and the substance of the proposer's response for answers to technical questions and for additional information. I was shocked with the pedantry and the profound lack of intellect actually written in the response. I was disappointed with the visible disregard for manners and with the actual lack of respect written into and appearing in the lines of the response. In conscience I cannot recommend that the government take this proposer or the material presented as a serious attempt to gain a contract. And I certainly would not wish upon any government representative the responsibility of confronting or dealing with any proposer who allows or perhaps promotes such attitudes or such behavior.

AR, exh.7, at 5.

It is axiomatic that agencies are required to evaluate proposals based solely on the evaluation factors identified in the solicitation, 41 U.S.C. § 253b(a) (2000), Federal Acquisition Regulation § 15.305, and that they must adequately document the reasons for their evaluation conclusions. Future-Tec Mgmt. Sys., Inc.; Computer & Hi-Tech

Mgmt., Inc., B-283793.5, B-283793.6, Mar. 20, 2000, 2000 CPD ¶ 59 at 7. The evaluation factors in the RFP here did not provide for downgrading a proposal based on the tone of the proposal or the offeror's manners, attitudes or behavior, and there is nothing in the minimal evaluation record identifying the criterion applied or otherwise explaining the basis for the evaluator's statements. Moreover, having read the proposal, we are at a loss to understand the basis for the evaluator's observations. For example, we are unable to identify any area or aspect of the proposal that could reasonably be said to demonstrate a "lack of respect" (and, since the evaluation apparently was based solely on the written submissions, there would appear to be no other basis for the evaluator's views). We conclude that this portion of the fifth evaluator's comments did not provide a reasonable basis for downgrading CIS's proposal.

The comments next observe that, on page three of the revised proposal, CIS offered [deleted] in task area 2 (task order management) two individuals who do not meet the RFP's experience requirements; the comments go on to reference page 18 of the proposal in support of the observation that these two individuals are being offered in task area 2. A review of the proposal language, however, establishes that this observation is simply incorrect. In this regard, page 3 of CIS's revised proposal—responding to the agency's discussion question relating to the experience of its proposed personnel—specifically states [deleted]. AR, exh. 15, at 2. These two individuals are mentioned again on page 18, but only for purposes of describing the current—as opposed to the proposed—team performing the contract (CIS is the incumbent for this requirement). We conclude that this aspect of the evaluation record does not reflect the contents of CIS's proposal, and thus did not provide a reasonable basis for downgrading the proposal.

The next portion of the narrative observes that CIS's past performance is limited in terms of overall experience, years of experience and number of contracts requiring similar performance. This observation is made in conclusory terms, with no supporting detail from the firm's past performance information. The record shows that CIS initially cited two prior contracts for purposes of demonstrating its past performance, one of which was the prior contract for this requirement. During discussions, the agency asked for additional past performance information, and CIS provided information about three additional contracts. In each instance, CIS organized the information by describing the work performed in terms of its relevance to the seven task areas outlined in the RFP, and included in each of the listings information relating to each of the seven task areas. CIS's revised proposal thus included five past performance references spanning the timeframe 1996 to the present (approximately 8 years). Since the RFP requested only a list of the last two contracts performed during the past 3 years, as well as those currently being performed, RFP at 56-57, CIS appears to have presented information relating to an adequate number of contracts that appear relevant to the requirement being solicited. In the absence of some explanation for the fifth evaluator's conclusory

observations indicating why he found otherwise, we find no reasonable basis for the downgrading of CIS's proposal in this area.²

The balance of the narrative is devoted to criticism of proposed enhancements offered by CIS in terms of [deleted]. The narrative criticizes these proposed enhancements for three principal reasons: the enhancements were not provided under the firm's predecessor contract; any efficiencies achieved will benefit the contractor's employees, as opposed to government employees; and the proposal does not state that these enhancements currently exist or explain when they will be implemented during contract performance. The narrative in this area concludes by stating: "Therefore, all of that information is no more than a pipe dream, mere vapor to be disbursed with one's next breath." AR, exh. 7, at 5.

Again, these statements are not supported by the record. First, to the extent that the evaluation criticizes CIS for not providing these enhancements under the predecessor contract, there is nothing in the record showing that CIS offered the same enhancements in its previous proposal, or that they were otherwise required under the earlier contract.

Similarly, nothing in the proposal suggests that these enhancements will not actually be provided at the commencement of performance. In this regard, the proposed enhancements are based on CIS's providing [deleted]. CIS's proposal addresses the enhancements as follows:

[deleted]

AR, exh. 13, at 5. Elsewhere, the proposal states:

[deleted]

AR, exh. 13, at 132. As with the areas discussed above, absent some explanation in the record for the fifth evaluator's conclusions regarding CIS's proposed enhancements, those conclusions are unsupported, and therefore unreasonable.

OTG

CIS asserts that the agency also misevaluated the OTG proposal. According to the protester, the agency improperly accepted the proposal for award notwithstanding that it failed to meet two solicitation requirements: the requirement to provide

² This observation is all the more confusing given that, during the initial proposal evaluation, the fifth evaluator identified CIS's past performance as a strength and stated: "Good experience, especially with NIH." AR, exh. 4, Initial Evaluation Worksheet of the Fifth Evaluator.

letters of commitment for all of its proposed personnel, and the requirement to provide a security program plan.

We agree with CIS. Regarding letters of commitment, the RFP provided: “For all proposed personnel who are not currently members of the offeror’s staff, a letter of commitment or other evidence of availability is required. A resume does not meet this requirement.” RFP at 59. OTG proposed 14 individuals not currently employed by OTG. AR, exh. 8, at 25-52. However, OTG presented only 10 letters of commitment for these 14 individuals; OTG did not submit letters of commitment for the other 4 proposed employees.

The agency asserts that it relied on other language in the OTG proposal in concluding that OTG had satisfied the requirement for evidence of availability. Specifically, the agency cites the following language: “Finally we have requested and received letters of intent from our proposed staff (see Attachment C).” AR, exh. 8, at 2. This representation did not satisfy the requirement. The statement itself is no more than a self-serving representation, and in relying on it the agency ignored the fact that Attachment C to the OTG proposal includes only the 10 letters of commitment referenced above; Attachment C does not include any evidence of the availability of the other 4 proposed employees. Under these circumstances, we find that OTG failed to meet this solicitation requirement.³

As noted, CIS also asserts that the OTG proposal did not include an adequate security program plan. The agency responds that CIS’s assertion in this respect is simply disagreement with the agency’s evaluation conclusion, asserting that it reviewed the information in the OTG proposal and, in its discretion, concluded that it satisfied the security program plan requirement.

The evaluation in this area was unreasonable. The RFP required offerors to submit a detailed outline (commensurate with the size and complexity of the statement of work) of its present and proposed information technology systems security program, demonstrating compliance with the statement of work’s security requirements, as well as various statutory and regulatory provisions relating to computer security. RFP at 61. The RFP cautioned offerors as follows:

³ The agency, in a supplemental report, asserts, without supporting evidence, that the protester failed to document the availability of three of its proposed employees. However, the record shows that all three are current employees of CIS; there thus was no requirement to furnish evidence of availability for these individuals. We note in any event that CIS’s proposal included a signed letter from each of its proposed employees—including the three employees mentioned by the agency—in which the employees commit to their continued availability to perform the requirement in the event that CIS is awarded the contract. AR, exh. 14, attach. 8.

Proposals which merely offer to conduct a program in accordance with the requirements of the Government's scope of work will not be eligible for award. The offeror must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

RFP at 59.

The OTG proposal fails to provide the level of detail required by the solicitation. The firm's proposed security program is outlined in a half-page portion of its proposal that is comprised of four short paragraphs. The first paragraph states that OTG and its subcontractor understand that their personnel may require access to sensitive data and systems, and that access to these systems and data may require their personnel to submit to and pass "various levels of investigation before employment with the government." AR, exh. 8, at 64. The next paragraph—which includes the language the agency states it relied upon in finding the OTG proposal acceptable—states in its entirety:

The OTG/Verizon Team agrees to comply with the AIS (Automated Information Systems) security requirements set forth in the statement of work upon receipt of the government furnished DHHS Automated Information Systems Security Program (AISSP) Handbook. OTG further agrees to include compliance to these security guidelines in any subcontract awarded pursuant to the Prime contract.

Id. The next paragraph of the proposal reiterates that OTG understands that its employees working on the contract will be subject to various background checks, and the final paragraph states that OTG agrees to adhere to all established security training and awareness requirements, that its employees will maintain the integrity, confidentiality, authenticity, availability and nonrepudiation of data processed, transmitted or stored on systems in use by NIH, and that it agrees to be monitored to ensure compliance with all security requirements. Id. (OTG, in its revised proposal, also stated that it understood that its employees would be required to complete online NIH computer security awareness training, and also that they will be required to review and become familiar with any security information supplied by the government during employee orientation. AR, exh. 10, at 16.)

This language does not set forth a technical approach or an explanation of such an approach, as expressly required by the RFP; it is entirely lacking in any detail relating to OTG's information technology security program, and fails to demonstrate or describe how OTG plans to comply with the various security requirements (statutes, regulations and agency guidance) called out in the RFP. Rather, the proposal does little more than agree to conduct a security program in accordance with the terms of the statement of work; this is precisely the kind of blanket statement that the RFP cautioned offerors against. Accordingly, we find that there was no reasonable basis for the agency's evaluation of the OTG proposal in this area.

In view of the foregoing, we conclude that the agency misevaluated the proposals of both CIS and OTG. We also find that the agency's misevaluation was prejudicial to CIS, since there is a reasonable possibility that, but for the agency's errors, CIS might have been selected for award notwithstanding its higher price. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see also Statistica v. Christopher, 102 F.3d 1,577, 1,581 (Fed. Cir. 1996). We therefore sustain CIS's protest.⁴

RECOMMENDATION

We recommend that the agency at a minimum reevaluate the proposals of the competitive range offerors and make a new source selection decision. However, in light of our finding that the OTG proposal may have been technically unacceptable, the agency also may elect to reopen discussions and obtain revised proposals. Should the agency find that another offeror is properly in line for award, we recommend that the agency terminate the contract awarded to OTG for the convenience of the government and make award to the firm found to be in line for award.⁵ We further recommend that CIS be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2003). CIS's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving of our decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

⁴ CIS also alleges that OTG and its subcontractor Verizon have an organizational conflict of interest because of prior or current contractual relationships that the two concerns have with the agency. This aspect of the protest is academic in light of our recommendation (discussed below) that the agency reevaluate proposals and make a new source selection decision.

⁵ The agency executed a determination and finding to continue performance of the OTG contract notwithstanding CIS's protest on grounds that urgent and compelling circumstances significantly affecting the interests of the government would not permit it to suspend performance of the contract. See 31 U.S.C. § 3553(c)(2) (2000). Nonetheless, because of the ongoing nature of the requirement, we believe the agency can implement our recommendation and continue to meet its need for these services without disruption.