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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Blane International Group, Inc.

File: B-310329

Date: December 13, 2007

Jeffrey N. Schwartz, Esq., Lawrence E. Newlin & Associates, PC, for the protester.
Vera Meza, Esq., and Bradley J. Crosson, Esq., U.S. Army Materiel Command, 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

Contracting agency engaged in meaningful discussions regarding protester's delivery plan, such that the protester should have been aware of agency's concerns, where it informed protester that its delivery plan was difficult to read and follow.

DECISION

Blane International Group, Inc. protests the Department of the Army's award of a contract to GSS, Inc., an affiliate of Sporting Supplies International (SSI), under request for proposals (RFP) No. W52P1J-07R-0104, for ammunition. Blane primarily asserts that the agency failed to engage in meaningful discussions.

We deny the protest.

On June 28, 2007, the Army issued the solicitation for nonstandard ammunition for the Afghanistan National Security Forces and the Government of Iraq. The solicitation was structured for multiple awards: one for the Afghanistan requirement, and two for the Iraq requirement ("Iraq A" and "Iraq B"). RFP at 49. Award was to be made to the firm or firms submitting the lowest-priced, technically acceptable offer, with technical acceptability to be evaluated based on three subfactors: delivery plan, shipping plan, and quality assurance plan. RFP at 42. The solicitation stated that the "Technical Subfactors will be evaluated on a Go/No Go Basis; and only contractors who receive a Go on all Sub-factors under the Technical Factor will be evaluated on Price." Id.

The Army received 7 proposals for the Afghanistan requirement and 10 for the Iraq requirement by the August 1 closing date. The Army established two competitive

ranges--one for each requirement--and opened discussions. Blane, whose proposals were included in the competitive range for both requirements, received a letter from the agency outlining various issues with its proposals, and requesting that it respond to the issues with a detailed and complete answer. Regarding the Iraq requirement, the letter stated that "[[t]he Delivery Plan is difficult to read/follow. Please identify producers along with suppliers," and that "[c]ommitment letters do not list all of the requested items. Provide all commitment letters from all producers." Agency Report (AR), Tab 16, at 1.

On August 15, Blane responded to the discussion letter by modifying its delivery plan and providing commitment letters from suppliers. AR, Tab 23. Over the next several days, Blane responded to inquiries regarding its financial capability, which, on August 27, resulted in the Defense Contract Management Agency's (DCMA) rating Blane a low financial risk. On August 31, the agency notified Blane that its offer for the Iraq B requirement, priced at $21,296,000, had been determined to be technically unacceptable for a "no go" finding under the delivery plan technical subfactor, and that award had been made to GSS at a price of $25,977,161. Following a debriefing, Blane filed this protest, challenging the award of the Iraq B requirement. Blane challenges the award on a number of grounds. We find all of Blane's arguments to be without merit; we discuss several of these arguments below.

DISCUSSIONS

Blane primarily asserts that the discussion letter it received did not constitute meaningful discussions because it failed to provide sufficient information to enable Blane to address its delivery plan deficiencies.[1]

Discussions, when conducted, must be meaningful, that is, they may not be misleading and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8. However, agencies are not required to "spoon feed" an offeror during discussions; they need only lead offerors into the areas of their proposal that require amplification. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6.

The discussions here were unobjectionable. As noted above, the discussion letter specifically advised Blane that its delivery plan was difficult to read and follow. In

[1] In its initial protest, Blane challenged the agency's "no go" determination under the delivery plan subfactor. However, the agency responded to this assertion in its report, and Blane did not rebut the agency's position in its comments on the report. Under these circumstances, we consider the protester's challenge to the "no go" determination to be abandoned. Planning Sys., Inc., B-292312, July 29, 2003, 2004 CPD ¶ 83 at 6.

this regard, Blane's initial delivery plan consisted of a chart containing various item descriptions (down the left hand side of the chart), amounts (throughout the chart, including various blank spaces), and country names (down the right hand side of the chart), formatted in such a manner that the columns contained no headings--thus making it unclear to what the columns referred--and the rows contained amounts that were not clearly on the same line, making it unclear which amount referred to which item description.[2] Since the nature of the agency's difficulty with the chart was, simply, that it was difficult to read and follow, the discussion letter was sufficient to lead Blane into the area of its proposal that required improvement or further clarification.

Blane asserts that the agency should have reviewed its entire proposal, including the quantities contained in a "transportation matrix," and then brought any discrepancies to its attention during discussions. Protester's Comments at 3. However, while the protester may believe that it would have been better able to address the deficiencies in its delivery plan if the agency had approached discussions as it suggests, the agency was not required to do so; again, the agency was only required to lead the protester into the area of concern. Moreover, given the lack of clarity in the chart, and the agency's resultant inability to determine precisely what Blane intended, we think the agency was not in a position to provide more information in its discussion letter; certainly, it was not required to provide more detailed questions based on its speculation as to what Blane may have intended.

TECHNICAL ACCEPTABILITY

Blane asserts that, notwithstanding the agency's position that its proposal was found to be "no go," the record actually shows that its proposal was considered acceptable. In this regard, citing the RFP language providing that "only contractors receiving a GO on all sub-factors under the technical factor will be evaluated on price," RFP at 42, Blane argues that, since DCMA evaluated its price, its proposal must have

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[2] The record reflects that Blane responded to the discussion item by attempting to provide a more coherent delivery plan; however, the agency concluded that Blane's response did not fully allay its concerns. For instance, although Blane submitted a revised delivery chart that now included headings for each of the columns--specifically, "item description," "total quantity," "30 days," "60 days," "90 days, "120 days," and "Source of Material"--the agency concluded that the delivery schedule was still in a format that was difficult to read, and that it was "unclear if the contractor is supplying required quantities within the customer's required delivery date." AR, Tab 32, at 6. This conclusion was reached, in part, because the chart remained unclear as to which amounts referred to which item descriptions. Contracting Officer's Statement at 9. Blane does not challenge the agency's conclusion that its delivery plan, as revised, remained deficient.

been found to be technically acceptable.[3] Blane also asserts that its proposal must have been acceptable since it was never notified that its proposal was no longer included in the competitive range, as required under Federal Acquisition Regulation § 15.306(c)(3). This argument is without merit. The acceptability of offerors' proposals was to be determined, not on the basis of whether the agency complied with procedural requirements in conducting the procurement, but on the basis of the contents of the proposals. The record shows, as discussed, that the agency rated Blane's proposal "no go" based on the evaluation of its delivery plan, and Blane has not shown that this evaluation was unreasonable. Neither the fact that the agency proceeded to evaluate Blane's price, nor the fact that the agency may have failed to provide Blane with notice of its proposal's elimination from the competitive range operate to override this evaluation, or otherwise affect the propriety of the award.

EVIDENCE OF COMMITMENT

The solicitation required that offerors provide information regarding the "Supplier/Source of the material, including company name, location, and proof of commitment." RFP at 42. The agency advised Blane in its discussion letter that the commitment letters provided with its proposal "do not list all the requested items. Please provide all commitment letters from all producers." AR, Tab 16, at 1. Likewise, GSS was asked in its discussion letter to "identify all sources/suppliers," and to "[p]rovide all commitment letters from all producers and suppliers." AR, Tab 17, at 1. In response, GSS provided letters from suppliers to SSI, a company affiliated with GSS, and a letter from SSI stating that the majority of the items would be "self supplied" by SSI from "existing inventory…and planned production." AR, Tab 25, at 8. The agency found that SSI's proposal to supply these items from new production with significant quantities already in stock constituted sufficient evidence to satisfy the commitment requirement. Blane maintains that it was improper for the agency to accept GSS's evidence of commitment, since SSI is an affiliated company, so that the evidence was essentially from GSS itself. We find nothing objectionable in GSS's commitment letters. Since GSS provided letters from suppliers, and also from SSI, the producer of the ammunition, we think the agency properly could find that the awardee had provided adequate evidence of commitment.[4]

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[3] Blane asserts that the agency's evaluating its price improperly misled it into believing that its proposal had been found technically acceptable, such that it did not seek clarification regarding the "vague alleged deficiency that its delivery plan was difficult to read/follow." Protester's Comments 2. However, at the time Blane learned that the agency was evaluating its financial capabilities, it already had submitted its response to the discussion questions without seeking clarification. Given this sequence of events, we find it implausible that Blane was misled.

[4] In its November 7 submission, the protester asserts that GSS and SSI are merely ammunition brokers, and have no factories themselves, implying that the agency

(continued...)

Finally, Blane asserts that GSS failed to comply with the solicitation requirement for information regarding the location of suppliers. Blane asserts that the awardee has failed to identify the address of its companies, instead only identifying them as "CONUS" [Continental United States]. This argument is without merit. Contrary to the protester's assertion, the solicitation did not require addresses for suppliers; it required only a location. RFP at 42. The agency reasonably determined that GSS's reference to CONUS satisfied this broad requirement. AR, Tab 10, at 1-2.

We deny the protest.

Gary L. Kepplinger
General Counsel

(...continued)
should have confirmed GSS's commitment information. However, the RFP did not provide for such confirmation. In any case, the allegation is untimely, since it is not apparent why it could not have been raised in Blane's October 29 comments filed in response to the October 18 agency report. Our Regulations do not contemplate the piecemeal development of protest issues. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2); see Mele Assocs., Inc., B-299229.4, July 25, 2007, 2007 CPD ¶ 140. The November 7 letter raises additional arguments--for example, that GSS's shipping plan does not meet the RFP requirements--that are based on information in the agency report. Thus, these arguments, too, are untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).