Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Telestar Corp.

File: B-275855

Date: April 4, 1997

Frank Liu for the protester.
Donald F. Hassell, Esq., Brian T. Kildee, Esq., and Robin B. Teichman, Esq., Nuclear Regulatory Commission, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's conclusion that protester's proposal is technically unacceptable is denied where record demonstrates that agency's evaluation of the proposal was reasonable.

2. Agency was not required to conduct discussions with offeror whose proposal reasonably had been determined technically unacceptable and excluded from the competitive range.

DECISION

Telestar Corp. protests the rejection of its proposal under request for proposals (RFP) No. RS-IRM-96-177, issued by the Nuclear Regulatory Commission (NRC) for the acquisition of microcomputer hardware and software, laser printers, and microcomputer support services. The protester takes issue with the technical evaluation of its proposal and objects to the agency's failure to hold discussions with it.

We deny the protest.

BACKGROUND

The RFP sought a contractor to furnish computer software and hardware and laser printers and to provide computer support services, including hardware moves, upgrades, and maintenance and software installation and deinstallation.[1]

[1]Network services were not included in the services sought since NRC contracts for them separately.

Competition under the solicitation was limited to socially and economically disadvantaged firms in the transitional stage of the Small Business Administration's section 8(a) program.

The RFP provided for award to the offeror whose proposal represented the most advantageous technical/cost relationship, with technical merit a more significant factor than cost in the selection process. The solicitation identified the technical evaluation factors (and subfactors) and their corresponding weights as follows:

I. Technical Competence	45
A. Key Personnel	20
B. Technical Approach	20
C. Technical Documentation	5
II. Corporate Experience and Contractor Past Performance	45
III. Program Management and Project Reporting	5
IV. Vendor Relationships	5

Offerors were advised that in addition to submitting a written proposal, they would be required to make an oral technical presentation and to participate in an interview conducted by government representatives. The sole purpose of the oral presentation and the interview, the RFP explained, was to permit the agency to test and evaluate the offeror's knowledge and competence with regard to the government's requirements and program objectives, the relevant technology, and program challenges and risks. The solicitation further advised that the oral presentation and interview answers were not part of the offers and could not include changes to the offers; that neither the presentation nor the interview would constitute discussions within the meaning of Federal Acquisition Regulation (FAR) §§ 15.601 FAC (90-40) and 15.610 FAC (90-31), nor would they obligate the government to entertain revisions to the offers or to solicit best and final offers; and that the NRC intended to award without discussions.

Five offerors submitted timely written proposals. The proposals were reviewed by members of the source evaluation panel (SEP), who noted areas requiring clarification. Each of the offerors was then scheduled for an oral presentation/ interview. After each oral presentation, the SEP convened and decided on interview questions to ask the presenters. The questions were intended to clarify written materials, to amplify areas not adequately explained and to probe the qualifications and abilities of the key personnel proposed. Upon completion of each interview, the panel reconvened to score the proposal in question.

The five proposals received scores ranging from 95.99 (Sylvest Management Systems Corp.) to 16.99; Telestar's score of 27.65 was second low.[2] The SEP concluded that Telestar's proposal was technically unacceptable due to the deficiencies in the technical and management proposals as well as its corporate experience. The SEP determined that since Sylvest's score so far exceeded any of the others, and since its evaluated costs were lower than those of the only other proposal that could possibly have been made acceptable through negotiations, it was the only firm that stood a reasonable chance of receiving the award; accordingly, the SEP recommended a competitive range of one, i.e., Sylvest. The contracting officer accepted the panel's recommendation and notified the four firms other than Sylvest that their proposals had not been included in the competitive range. Telestar responded by protesting first to the agency and then to our Office.

Telestar's proposal received a score of 9.66 (of a possible 45) under the technical competence evaluation factor; a score of 11.66 (of 45) under the corporate experience and past performance evaluation factor; a score of 3 (of 5) under the program management and project reporting factor; and a score of 3.33 (of 5) under vendor relationships. Proposal weaknesses identified by the evaluators included:

--emphasis on network installation and support services, an area of work not required under the solicitation, in combination with lack of information pertaining to the installation or maintenance of workstation platforms, an area that was required, indicated that Telestar did not understand the nature of the work to be performed;

--failure to adequately address maintenance support and services;

--failure to adequately address integration with existing NRC project management and tracking systems;

--lack of experience on the part of proposed personnel in work related to the work to be performed under the solicitation;

--lack of corporate experience in work of a similar size, scope, or nature to that required here.

DISCUSSION

The protester takes issue with the agency's evaluation of its proposal, arguing that it is technically qualified to perform the work required and that the evaluators wrongly concluded that it misunderstood the nature of the work to be performed. The protester further argues that to the extent that there were deficiencies in its technical approach, the contracting officer should have pointed them out during discussions and given it an opportunity to correct them.

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[2]The other two scores were 66.6 and 58.66.

The evaluation of technical proposals is primarily the responsibility of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation. Young Enters., Inc., B-256851.2, Aug. 11, 1994, 94-2 CPD ¶ 159 at 3. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 9. The fact that a protester does not agree with the evaluation does not render the evaluation unreasonable. Newport News Shipbuilding and Dry Dock Co. et al., B-261244.2 et al., Sept. 11, 1995, 95-2 CPD ¶ 192 at 8.

Here, the protester has failed to demonstrate that the agency's evaluation of its proposal was unreasonable. The protester's argument that it should not have been found "technically unqualified" is misdirected--Telestar itself was not found to be technically unqualified, its proposal was determined to be technically unacceptable. Even the most well-qualified firm may be rejected as technically unacceptable if it fails to contain information demonstrating compliance with the solicitation requirements. See Sunbelt Properties, Inc., B-245729.3, Mar. 12, 1992, 92-1 CPD ¶ 278 at 2.

Further, there is no evidence in the record to show that it was unreasonable for the evaluators to conclude that the emphasis in Telestar's proposal on network installation and support, in combination with its failure to discuss other required areas of work, indicated a lack of understanding of the solicitation's requirements. The protester contends that its emphasis on network installation and support was not misplaced since the RFP stated that 3 years of experience in "network connectivity" was desirable for the senior microcomputer technicians and that 2 years "exposure" to such was desirable for the microcomputer technicians. As the agency points out, however, "network connectivity" (i.e., assuring that computers function properly when connected to a network) is not the same thing as installing and maintaining a network; the former was encompassed within the work to be performed under this solicitation, while the latter was not. Also, it was apparent from the solicitation that experience in network connectivity was far less significant than experience in other areas relating to the integration and installation of computer systems hardware and software; for the senior computer technicians, for example, 7 years of experience with the latter was required, while only 3 years of experience with the former was "desired."

Regarding the protester's argument that its proposal should have received a higher score under the corporate experience/past performance criterion, the solicitation clearly provided that in evaluating proposals under this factor, the evaluators would consider the extent to which the offeror has successfully performed on past or

current contracts "of similar size and scope related to this effort." The evaluators determined that only one of the protester's references was for related work (i.e., both the acquisition and support of computers); the others were limited to work in Telestar's factory manufacturing, upgrading, and installing peripherals in microcomputers and working with telecommunications network and other nonrelevant equipment. The protester insists that all of these contracts did involve support services since it furnishes warranties on all of its delivered equipment. The agency points out in response, however, that warranty work is only a limited part of the broad spectrum of support services called for in this solicitation. Since the protester's proposal did not demonstrate that it has experience performing the type of support services required here, the record supports the evaluators' scoring of the proposal under the corporate experience/past performance criterion.

The protester has not attempted to rebut other aspects of the agency's technical evaluation.[3] For example, it has not argued that the resumes submitted for its key employees demonstrated compliance with all of the solicitation's experience requirements, nor has it argued that its proposal adequately addressed integration with existing NRC project management and tracking systems or maintenance support and services. Absent any attempt by the protester to rebut the agency's findings, and given that the record supports the agency's findings, we see no basis upon which to conclude that the agency's evaluation was unreasonable. See Amcare Medical Servs., Inc., B-271595, July 11, 1996, 96-2 CPD ¶ 10 at 2.

The protester also argues that the agency improperly failed to conduct discussions with it. The FAR requires agencies to conduct discussions only with responsible offerors submitting proposals within the competitive range, i.e., offerors whose proposals stand a reasonable chance of being selected for award. FAR §§ 15.609(a),(b); 15.610(b). Since the evaluators reasonably concluded that Telestar's proposal was technically unacceptable and thus properly excluded it from the competitive range, the agency was under no obligation to hold discussions with

[3]In commenting on the agency report, the protester raised for the first time the argument that the agency evaluators did not have the technical qualifications to evaluate proposals. We will not review allegations concerning the qualifications of evaluators absent a showing of fraud, conflict of interest, or actual bias on the part of the evaluators. American CASA/National Air, B-271274; B-271274.3, May 23, 1996, 96-1 CPD ¶ 251 at 4. No such showing has been made here; in fact, the protester offers no evidence in support of its allegation.

Telestar.[4] Cobra Tech., Inc., B-272041; B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 6.

Telestar also objects to the agency's failure to evaluate its price. We fail to see any impropriety in this since Telestar's technical proposal had been determined to be unacceptable, it would have been ineligible for award, no matter what its price. Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94 at 5.

In its initial protest, Telestar also complained that a company associated with Tri-Cor, the incumbent contractor for the services sought here, had been accorded favored treatment by the agency in the evaluation process. When it was revealed that Sylvest, and not the company associated with Tri-Cor (which was never identified by name by either the agency or the protester), had been selected for award, the protester changed its argument to a complaint that Sylvest had received favored treatment. The protester has offered no evidence to substantiate its allegations, and we found none during our review of the record. We will not attribute prejudicial motives to contracting officials on the basis of unsupported allegations, inference or supposition. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 28.

The protest is denied.

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[4]To the extent that the protester may have misconstrued the interview phase of the proposal process as oral discussions, the RFP explicitly advised that the interviews were not intended to be discussions and that offerors would not be entitled to submit revised offers upon their conclusion.