Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Gemini Industries, Inc.

File: B-281323

Date: January 25, 1999

Victoria R. Bondoc for the protester.
Mark H. Alexander, Esq., Defense Commissary Agency, for the agency.
Mary G. Curcio, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that evaluation of proposals received in response to solicitation for Office of Management and Budget Circular No. A-76 cost comparison against undisclosed government staffing estimate was inconsistent with objective of obtaining performance at the lowest cost is denied; government has the right to obtain the services it requires to meet its needs and, in order to do so, may evaluate proposals against an undisclosed reasonable estimate of appropriate staffing, where the RFP notifies offerors that staffing is an area of evaluation and evaluation takes into account unique features of offeror's proposal.

DECISION

Gemini Industries, Inc. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. DECA01-98-R-0007, issued by the Defense Commissary Agency (DCA) for receiving/storage/holding area, shelf stocking, and custodial services for the commissary at Fort Drum, New York. Gemini argues that the evaluation method used by DCA was improper, and that the agency evaluated its proposal against unstated criteria.

We deny the protest.

The RFP was issued as part of a cost comparison under Office of Management and Budget (OMB) Circular No. A-76, to determine whether it would be more economical to accomplish the work in-house using government employees, or by contract. The RFP provided, at section M.2, that proposals would be evaluated for price and price realism, and against the following nonprice related factors: (1) past performance; (2) adequate staffing and staff-hours for the shelf stocking function; (3) adequate staffing and staff-hours for the custodial function including, as applicable, the meat market processing, preparation and wrapping area, the

receiving/storage/holding areas, the backup freeze/chill storage areas, dairy display cases, produce processing/storage areas and display cases; (4) adequate staffing and staff-hours for the receiving/storage/holding function; and (5) adequate project manager supervisory staff-hours for all services.

The solicitation included a performance work statement (PWS) which detailed the work to be performed. Offerors were required to include in their technical proposal "a brief description and discussion" of their "[c]omprehension of work requirements," which was to "include, as a minimum, a 'demonstration' of understanding of the scope of work required for each area of operation contained in the [PWS]." RFP § L.20(b)(2).[1] In addition, offerors were required to provide a "mix of disciplines proposed under each" of several listed PWS work functions "to indicate adequate staffing and manhours," and to propose project manager/supervisory hours, allocated to each PWS work function. RFP § L.20(b)(2)(A). Likewise, offerors were required to propose a unit price for each category of services. RFP § B. The RFP provided for the lowest-priced, technically acceptable offer to be selected for comparison with the government's cost estimate for in-house performance. RFP § M.4(b).

[Deleted] offerors responded to the solicitation. The agency evaluated the proposed staffing and staff-hours against a government standard that had been developed for the Fort Drum commissary. Contracting Officer's Statement at 1. Gemini's proposal was rejected as technically unacceptable, in part, because the evaluators found it did not include sufficient personnel to perform many of the required tasks. Contracting Officer's Statement at 2. Specifically, Gemini proposed approximately [deleted] percent fewer hours than the government estimate for receiving/holding/ storage area services; approximately [deleted] percent fewer hours for the day shelf stocking services; approximately [deleted] to [deleted] percent fewer hours for the night custodial services; approximately [deleted] percent fewer hours for the day custodial services; approximately [deleted] percent fewer hours for the meat department custodial services; and approximately [deleted] percent fewer hours for the nonworking supervisory functions. (In total, Gemini's proposal was evaluated as offering 30,296 hours, [deleted] to [deleted] percent lower than the government estimate of [deleted] to [deleted] hours.[2]) Contracting Officer's Statement at 2-3. In

[1]The technical proposal was limited to 25 pages. RFP § L.20(a)(2).

[2]As noted by the contracting officer, the productivity calculation sheet in Gemini's technical proposal included 628 fewer hours (30,296 hours) than the number set forth in Gemini's cost proposal (30,924 hours). Although Gemini suggests that this difference resulted from a flaw in the productivity calculation sheet rather than an error in its completion of the form, there is no basis for concluding that the difference, which related to grounds maintenance, materially affected the evaluation.

addition, the evaluators found that Gemini's proposal did not include an adequate discussion of Gemini's methodology for performing the contract; the evaluators determined that Gemini had failed to demonstrate a clear understanding of the tasks required under the PWS. Contracting Officer's Statement at 2.

Gemini asserts that the objective of OMB Circular No. A-76 is to obtain the performance of services at the lowest cost. According to Gemini, determining acceptability by setting a minimum number of hours for each service category is inconsistent with this goal because it precludes offerors such as Gemini from offering innovative approaches to contract performance. Gemini argues that, if offerors must provide a minimum number of hours, the government will always win the competition because the lowest-cost proposals, that is, those offering the fewest number of hours, will always be rejected as technically unacceptable.[3]

This argument is without merit. While the objective of an A-76 cost comparison study generally is for the government to obtain services at the lowest cost, it is inherent in this objective that the government also has the right to obtain the services it requires to meet its needs. The determination of the government's minimum needs and the best method of meeting them is primarily the responsibility of the procuring agency. See Mid-South Dredging Co., B-256219, B-256219.2, May 25, 1994, 94-1 CPD ¶ 324 at 5. To ensure that its need for adequate staffing will be met, it is proper for an agency to evaluate technical or price proposals against an undisclosed reasonable estimate of the appropriate staffing needed to perform the solicitation requirements where the RFP notifies offerors that staffing is an area of evaluation. Doss Aviation, Inc.; Dominion Aviation, Inc., B-275419 et al., Feb. 20, 1997, 97-1 CPD ¶ 117 at 5-6. However, it is inappropriate to determine the acceptability of proposals simply by the mechanical application of an undisclosed estimate, KCA Corp., B-255115, Feb. 9, 1994, 94-1 CPD ¶ 94 at 6-7; rather, an agency must also take into consideration whether an offeror's proposed work force is particularly skilled and efficient, or whether, because of a unique approach, a firm could satisfactorily perform with staffing different from the agency estimate. Doss Aviation, Inc.; Dominion Aviation, Inc., supra, at 5-6.

Here, DCA determined that Gemini not only offered insufficient staff-hours to perform a number of the required tasks, but also did not adequately explain in its proposal the methodology it planned to use to perform the contract. Contracting

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[3]Gemini argues that the evaluation should have been based on a comparison of offerors' total proposed hours to the government's total estimated hours, rather than on a comparison of the hours for each service. However, since the solicitation specifically indicated that the agency would evaluate proposed staff-hours for each service, Gemini's argument, first raised in its comments on the agency protest report, amounts to a protest of the solicitation terms, which is untimely because it was not filed prior to the closing time. See 4 C.F.R. § 21.1(a)(1) (1998).

Officer's Statement at 2; Individual Evaluation Sheets for Gemini's Proposal. In other words, the agency did not mechanically apply minimum staffing levels, but looked beyond the mere numbers of personnel proposed and evaluated the way in which the services actually would be performed. While Gemini complains that the government's approach precludes offerors from offering innovative approaches, Gemini has not cited any innovative approaches discussed in its proposal to demonstrate that it could satisfy the PWS requirements with the number of personnel it offered.[4]

Gemini argues that evaluating its proposal for performance methodology was improper because the solicitation did not provide for evaluation of methodology. This argument is without merit. While agencies must identify all major evaluation factors, they are not required to identify all areas of each factor which may be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. Federal Acquisition Regulation § 15.304(d); JoaQuin Mfg. Corp., B-275185, Jan. 29, 1997, 97-1 CPD ¶ 48 at 2. Here, as indicated above, four of the five nonprice evaluation factors set forth in the solicitation concerned adequate staffing and staff-hours for various categories of work, RFP § M.2, and offerors were required to demonstrate their understanding of the scope of work. RFP § L20(b)(2). We think the methodology an offeror intended to use to perform has a clear relationship to consideration of whether the staffing it proposed

[4]Gemini argues that DCA's use of an undisclosed staffing estimate was improper because government personnel who prepared the in-house offer "may have knowledge of the standards applied to other commissaries," and therefore will know what numbers are necessary to win the competition. Gemini Comments, Nov. 19, 1998, Attachment 2, at 2. However, knowledge that an incumbent gains in performing a contract does not create an unfair competitive advantage for the incumbent, PRC, Inc.--Recon., B-274698.4, July 10, 1997, 97-2 CPD ¶ 10 at 2; thus, where an agency uses an undisclosed estimate to evaluate proposals, an incumbent that has some knowledge of the agency's requirements by virtue of performance on that contract, does not have an unfair competitive advantage. International Resources Corp., B-251001.2, Mar. 22, 1993, 93-1 CPD ¶ 253 at 3. Since the agency is essentially in the position of an incumbent contractor here, a government advantage resulting from government personnel becoming familiar with the services while performing them is not an unfair advantage. Cf. Saxon Corp., B-236194, B-236194.2, Nov. 15, 1989, 89-2 CPD ¶ 462 at 3-4 (government is not required to disclose historical information in an A-76 procurement when such disclosure will compromise its competitive position).

was sufficient to perform the contract. It follows that DCA's consideration of methodology in evaluating Gemini's proposal was proper.

The protest is denied.

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