



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Williams Communications Solutions, LLC

File: B-283900

Date: January 18, 2000

Carl L. Vacketta, Esq., Kevin P. Mullen, Esq., and Brian R. Kennedy, Esq., Piper, Marbury, Rudnick & Wolfe, for the protester.

Judith Ward Mattox, Esq., for TennMark Telecommunications, Inc., an intervenor. Phillipa L. Anderson, Esq., and Dennis Foley, Esq., Department of Veterans Affairs, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against agency determination that protester's proposal was technically noncompliant is denied where it is based on protester's unreasonable interpretation of solicitation requirements.
2. Protest alleging that discussions were not meaningful is denied where record reflects that agency led protester into the area of its proposal in need of revision.

DECISION

Williams Communications Solutions, LLC protests the issuance of a task order to TennMark Telecommunications, Inc. by the Department of Veterans Affairs (VA), under task order proposal request No. VHA-020(642), issued to all Nortel Authorized General Services Administration (GSA) schedule representatives listed on GSA schedule No. GS-35F-1130D. The task order is for the upgrade of a telephone system at the VA Medical Center in Philadelphia. Williams argues that its proposal was improperly determined to be technically unacceptable, that the VA failed to conduct meaningful discussions, and that the VA improperly waived certain material requirements for the benefit of the awardee.

We deny the protest.

The proposal request was released on July 30, 1999, as a competitive Nortel GSA schedule procurement. Paragraph 2.17 of the request provided that the government would award a task order to the offeror whose offer conforming to the requirements

of the proposal request was determined to be most advantageous to the government, price and other factors considered. The other factor set forth in paragraph 2.17 was past performance. That paragraph further provided that proposals that failed to meet all of the mandatory requirements of the statement of work (SOW) would not be considered.

Amendments Nos. 1 through 3 modified various elements of the SOW and amendment No. 4 extended the proposal response date to September 15. Three proposals were received, including those from Williams and TennMark.

Technical proposals were reviewed by the contracting officer's technical representative (COTR) and the chief information officer (CIO) in Philadelphia. The contracting officer evaluated price proposals. On September 28, the VA issued letters to each offeror detailing technical deficiencies found by the COTR and the CIO, requesting price clarifications and establishing 12 noon on September 29 as the deadline for receipt of responses.

Final responses were forwarded to the COTR and the CIO on September 29 for review, and a second price analysis was performed. On September 30, Williams' proposal, with an evaluated price of \$ [deleted] (Agency Report, exh. 20), was found to be technically noncompliant in two areas because it proposed an insufficient number of power failure transfer units (PFTUs) and an insufficient number of paging microphones and consoles. Agency Report, exh. 22. TennMark's proposal, with an evaluated price of \$ 2,613,836.47 (Agency Report, exh. 20), was found to be technically compliant in all respects, and was selected for the issuance of the task order. Agency Report, exh. 22. Williams was notified of TennMark's selection on October 4; the firm was provided with a written debriefing on October 7 and this protest followed on October 12, in which Williams challenges the VA's evaluation of both proposals.

Williams first alleges that the evaluation of its technical proposal as failing to provide a sufficient number of PFTUs and paging microphone and consoles is incorrect. Further, Williams argues that these requirements were not identified as "mandatory" and, therefore, failure to satisfy them could not constitute a basis for rejection of its proposal under paragraph 2.17 of the proposal request. Williams also maintains that the requirements are not material and, therefore, any failure to meet them should have been waived by the VA. Finally, Williams alleges the agency failed to conduct meaningful discussions concerning the perceived weaknesses in its technical proposal.

EVALUATION

In reviewing protests against the propriety of an agency evaluation, it is not the function of our Office to independently evaluate proposals and we will, therefore, not disturb the agency's conclusion unless it is shown to be unreasonable. The

record must establish that the evaluation is unreasonable and the mere fact that a protester disagrees with the agency does not render the evaluation unreasonable. WRS Infrastructure & Env't, Inc., B-281222, Jan. 12, 1999, 99-1 CPD ¶ 66 at 3-4.

Regarding the requirement for PFTUs, paragraph 1.1.3.10 of the SOW provided, in pertinent part, as follows:

An automatic central office [CO] trunk connection to [predetermined] stations for emergency trunk by-pass/cut-through service shall be provided. The device(s) proposed interface to existing analog trunk facilities. These trunk bypass units shall be automatically activated upon power failure. [Emphasis added.]

The SOW, at paragraph 1.1.2.1, CO Trunk Bypass, required 16 ports for this requirement.

Amendment No. 1 responded to questions concerning the procurement. Question V involved the PFTU requirement: “[H]ow many size-wise, [PFTUs] are required?” In response, the VA advised: “The existing system has 52 analog ports that are power fail. The new system shall retain this capability.” Agency Report, exh. 3, at 6 (emphasis added).

Amendment No. 2 also discussed the PFTU requirement: “The Philadelphia facility is providing the following information for clarification with respect to the [PFTUs] discussed in Amendment No. 1.”

The number of existing [PFTUs] is approximately 84. These [PFTUs] support approximately 84 lines currently going through single density cards. These single density cards will be replaced under this task order. The Philadelphia facility will add an additional 16 new power fail lines prior to the award of this task order. This will be done using two 8 line Dee’s units. The old power [failure] equipment shall be replaced with 11 eight line Dee’s (or equal) units.

Agency Report, exh. 4, at 6 (emphasis added).

In its initial proposal, Williams proposed two [deleted] PFTUs and explained that each unit provides transfer circuits for [deleted] trunks to pre-wired analog telephones. The proposal also offered two [deleted] model [deleted] PFTUs to allow use of digital trunking, should all power go out. Agency Report at 6-7.

In written discussions, Williams was advised:

Paragraph 1.1.3.10 – [Your response] states [deleted] power failure equipment. The requirement is for analog trunk power failure equipment. In Amendment No. 2, Item G, “. . . the Philadelphia facility

will add an additional 18 [sic] new power fail lines prior to the award of the task order. This will be done using two 8 line Dee's units." Does the [deleted] unit meet the analog requirement and work with the VA provided lines? Do the features and capabilities of the [deleted] unit meet the features and capabilities of the Dee's unit the facility has?

Agency Report at 7.

In its final response, Williams advised:

The two (2) [deleted] power failure units provides for full operation of the two T-1 circuits during a power outage. The units allow access to the circuits without the need for special telephones or ground start buttons.

We have also proposed two (2) [deleted] [PFTUs] for the sixteen (16) analog trunks identified in [SOW] Table 1.1.2.1 which are required to be equipped with power failure transfer.

Id.

The agency's position is that Williams' proposal ignores the effect of amendment No. 2 which set forth the VA's need for 11 eight-line PFTUs to cover the 84 analog ports required by the amendment. The VA states that Williams has proposed two [deleted] units, which will cover 48 digital ports, and two [deleted] units, which will cover only 16 analog ports. Finally, VA points out that even the total of 64 ports covered does not meet its minimum needs of coverage of 84 analog ports.

Williams contends that the proposal request, even as amended, requires PFTUs for only 16 new analog lines because paragraph 1.1.2.2 of the SOW, which amendment No. 2 does not explicitly address, in the protester's view, states: "The existing analog emergency bypass shall be retained." Williams argues that this meant that it could assume that the existing capability to cover 100 analog lines was not to be covered under the task order. Williams concludes that, under its interpretation of the request, its proposal meets the VA's stated requirements.

Williams' interpretation is not reasonable. As quoted above, amendment No. 2 specifically advised offerors of a change in requirements. It explicitly referenced the need for supporting 84 analog lines and stated that "[t]he old power [failure] equipment shall be replaced with 11 eight line . . . units." In our view, although not explicitly referencing SOW paragraph 1.1.2.2, the later-issued amendment No. 2, which is directly contradictory to it, is intended to, and does, supersede the earlier

provision. Accordingly, we find that the agency reasonably concluded that Williams' proposal did not meet the stated solicitation requirements for analog PFTUs.¹

MANDATORY REQUIREMENTS

Williams next argues that since the proposal request did not identify any requirement as mandatory, it was improper for the VA to reject its proposal pursuant to paragraph 2.17 of the request. This argument elevates form over substance. As quoted with emphasis above, each provision regarding the need for PFTUs is couched in mandatory language. Therefore, the PFTU requirement, as amended, was "mandatory" within the context of paragraph 2.17 of the proposal request, and the proposal was properly rejected for failing to meet the requirement.

MATERIALITY

Williams argues that the PFTU requirement is not material and, therefore, should have been waived with respect to the evaluation of its proposal, considering the allegedly minimal impact on comparative evaluated prices that would occur if, in its proposal, the protester had, in fact, addressed and priced the full number of analog PFTUs required by the VA.

Where the failure of a proposal to accommodate a stated technical requirement has more than a negligible impact on the quality of goods or services needed by an agency, that failure is not to be viewed as a waivable minor informality. See TBS Research, B-274845, Jan. 7, 1997, 97-1 CPD ¶ 6 at 4; United Int'l Investigative Servs., B-265650, Dec. 18, 1995, 95-2 CPD ¶ 271 at 2-3.

¹ To the extent that Williams views the amendment as creating a patent ambiguity concerning whether the VA intended to retain or replace analog PFTU equipment, Williams was required to protest such an apparent solicitation defect prior to the next closing time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) 1999. In this regard, we note that Williams concedes that the agency's interpretation of the proposal request as amended is reasonable. Protester's Comments at 6. An offeror may not simply act on its own assumptions regarding a patently ambiguous solicitation requirement and then complain when the agency proceeds in a manner that is inconsistent with one of the possible interpretations. Watchdog, Inc., B-258671, Feb. 13, 1995, 95-1 CPD ¶ 69 at 5.

Both the agency and the protester have described the critical impact that PFTUs have on the quality of medical care in emergency situations. According to the contracting officer:

With respect to the [PFTUs], they are an integral part of the telephone system, especially in a health care setting. In the event the telephone system loses power or it becomes necessary to by-pass the telephone system due to unforeseen problems, the [PFTUs] activate. Analog telephone sets, strategically placed throughout the Philadelphia medical center, are directly connected to these [PFTUs] to provide connectivity to the outside world for medical center staff. In an emergent situation, these telephone sets would be used to contact additional staff to report for work; coordinate health care activities with area hospitals; or contact suppliers for needed medical equipment and supplies.

Agency Report, exh. 26, at 1-2.

According to the protester:

PFTU equipment is typically used with hospital telephone systems, which require emergency telephone service when experiencing an electrical power failure. A PFTU provides emergency telephone service in the event of an electrical power failure, when outgoing telephone lines otherwise would be rendered inoperable.

Protester's Comments at 3.

On this record, it is clear that not satisfying the full PFTU requirement would have a significant impact on the quality of emergency medical services at the Philadelphia Medical Center. Thus, the requirement was material and we have no basis to question the agency's decision not to waive it. See TBS Research, supra, at 4.

DISCUSSIONS

Williams asserts that discussions regarding the need for analog PFTU were not meaningful. It is a fundamental precept of negotiated procurement that discussions, when conducted, must be meaningful. Cotton & Co., LLP, B-282808, Aug. 30, 1999, 99-2 CPD ¶ 48 at 6. For discussions to be meaningful, they must lead offerors into the areas of their proposals requiring amplification or revision; the agency is not, however, required to "spoon feed" an offeror as to each and every item that could be revised so as to improved its proposal. The Communities Group, B-283147, Oct. 12, 1999, 99-2 CPD ¶ __ at 4.

Here, the agency clearly met the standard for meaningful discussions. The written question quoted above led Williams directly into the area of concern as to whether

its proposal satisfied the agency's stated need for extended analog PFTU coverage as modified by amendment No. 2. Nothing more was required. In light of the analysis set forth above, we find that the agency reasonably rejected Williams' proposal for failing to meet the expanded PFTU requirement for analog lines. Accordingly, we need not address the issues relating to the other requirement Williams allegedly did not meet--the agency's requirement for paging microphones and consoles.

Finally, in its comments on the agency report, Williams alleged that the VA "may have waived" defects in evaluating TennMark's proposal. Protester's Comments at 13. Specifically, the requirements which were allegedly waived were identified as PFTUs for future digital tracking and microphones/consoles to be installed in Building 3 of the Medical Center. Protester's Comments, attach. 1, at 5. In support of its contention the protester submitted the declaration of a telecommunications consultant who was admitted to the protective order issued in this case.

In its supplemental report, the agency explained its position as to why no requirements were waived for TennMark and why the awardee's proposal was fully compliant. TennMark also addressed the issue in supplemental comments. In Williams' response, its consultant concedes that the VA's position "may be reasonable" but asserts that Williams's position is "more reasonable." Protester's Supplemental Comments, attach. 1, at 2. In the final comments, the protester also concedes that TennMark's position is reasonable and similarly asserts that Williams' position is "more logical." Protester's Supplemental Comments at 3.

In view of this Williams' concession in this regard, the record provides no basis to conclude that the agency's evaluation of TennMark's proposal was unreasonable, and we, therefore, have no basis to disturb the selection. WRS Infrastructure & Env't, Inc., supra.

The protest is denied.

Comptroller General
of the United States