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Decision

Matter of: Carlson Wagonlit Travel

File: B-287016

Date: March 6, 2001

Lars E. Anderson, Esq., Paul N. Wengert, Esq., and Sean M. Howley, Esq., Venable, Baetjer & Howard, for the protester.

Barry Roberts, Esq., and Brian J. Hundertmark, Esq., Roberts & Hundertmark, for Omega World Travel, Inc., an intervenor.

Paul Kominos, Esq., and Capt. Dara Chane Leavitt, National Security Agency, for the agency.

Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency unreasonably evaluated proposal as technically unacceptable is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria; agency is not required to conduct discussions with offerors where solicitation advised that the agency intended to award a contract on the basis of initial proposals.

DECISION

Carlson Wagonlit Travel protests the award of a contract to Omega World Travel, Inc. under request for proposals (RFP) No. MDA904-00-R-3108, issued by the National Security Agency (NSA) for travel services. Carlson argues that NSA improperly evaluated its proposal as technically unacceptable and improperly failed to engage in exchanges with the firm prior to award.

We deny the protest.

NSA issued this RFP on September 19, 2000, to obtain the services of a commercial travel office (CTO) to provide or arrange for a complete range of travel services for agency official travel, including procuring transportation, lodging accommodations, rental cars, and other travel-related services at the most economical cost to the agency. The RFP anticipated the award of a no-cost contract with fixed-price transaction fees based upon commissions for one base year, with up to four 1-year option periods.

Award was to be made to the offeror whose proposal offered the lowest-priced transaction fees and met or exceeded the proposal evaluation criteria. NSA planned to use a pass/fail evaluation system to determine a CTO's capabilities relative to numerous evaluation criteria. To be considered for award, offerors' proposals were required to pass all criteria; a proposal failing one criterion would not be considered for award. RFP Proposal Evaluation Criteria (PEC) § B.1. The RFP advised that an unsupported statement of compliance with the statement of work (SOW) would not constitute a "responsive" proposal; "responsive" proposals were to provide the information outlined in the proposal preparation instructions (PPI) and to meet or exceed the requirements set forth in the SOW.¹ RFP § M.3. NSA planned to make award based on initial offers without conducting discussions or requesting proposal revisions. RFP § M.2. Since offerors might not have an opportunity to correct deficiencies in their proposals, they were cautioned that it was essential for them to provide all required proposal information in a "thorough and unambiguous manner" and to respond to the criteria and support their capability for providing service to the agency.² PPI at 1.

NSA received three proposals by the October 25 closing date, including those from Carlson and Omega. On November 1, the technical evaluators determined that the SOW was unclear with respect to transaction fee billing and recommended that it be clarified. On November 22, NSA issued amendment No. 0003 to revise the SOW with respect to transaction fee billing and issued letters requesting final proposal revisions (FPR) to all three offerors.³ The requests advised offerors that their proposals had been evaluated and no discussions were contemplated. Offerors were not asked any specific questions about their proposals, but were encouraged to review them to ensure they satisfied all requirements set forth in the PPI, RFP, and other applicable documents.

¹ Although the solicitation refers to responsive and nonresponsive proposals, the concept of responsiveness is not applicable to negotiated procurements. Where a proposal submitted under a negotiated procurement fails to meet a material requirement of the RFP, it is unacceptable, not nonresponsive. Blocacor, LDA, B-282122.3, Aug. 2, 1999, 99-2 CPD ¶ 25 at 2 n.1.

² In view of the RFP's specific requirements that offerors support their statements of compliance with the SOW, we do not agree with Carlson that its mere statement that it would comply with such requirements, submitted in accordance with the clause at Federal Acquisition Regulation (FAR) § 52.215-1(c)(2)(iii), was sufficient to render its proposal technically acceptable.

³ Notwithstanding the letters' use of the term "FPR," usually a post-discussions event, see FAR § 15.307, NSA did not conduct discussions in this procurement.

All three offerors submitted FPRs by the November 29 closing date; none revised their original proposals. The technical evaluation team found Carlson's proposal technically unacceptable in four areas, including the implementation plan criterion⁴ and an aspect of the performance requirements summary criterion. Carlson's proposed transaction fees were the lowest received, at \$[DELETED]. The technical evaluation team also found the third offeror's proposal technically unacceptable, and recommended award to Omega as the firm submitting the only technically acceptable proposal at a price of \$1,811,458. The source selection authority concurred and award was made to Omega on December 13.

Carlson filed this protest after its debriefing. The firm disputes NSA's bases for finding its proposal technically unacceptable and argues that NSA improperly failed to engage in exchanges with the firm prior to award. After the protest was filed, NSA determined that performance of the contract was in the best interest of the government and that compelling and urgent factors dictated a decision to override the suspension of performance. See 31 U.S.C. § 3553(d)(3)(C)(i) (1994).

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. Id. The offeror has the burden of submitting an adequately written proposal, and an offeror's mere disagreement with the agency's judgment concerning the adequacy of the proposal is not sufficient to establish that the agency acted unreasonably. PEMCO World Air Servs., B-284240.3 et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 15. Our review of the record shows that NSA's evaluation of Carlson's proposal as technically unacceptable with respect to the implementation plan criterion was reasonable, given its conflicting information and lack of detail.⁵

Under the RFP's implementation and transition plan criteria, offerors were required to describe an implementation plan that included a transition summary and a

⁴ "Implementation plan" and "transition at completion of contract" were listed as separate evaluation criteria but the PPI instructed offerors to combine their responses in one place and NSA evaluated them accordingly.

⁵ Since we find that NSA reasonably evaluated Carlson's proposal as technically unacceptable under the implementation plan evaluation criterion, and since the RFP provided that proposals could be considered for award only if they were found acceptable under all criteria, we need not address Carlson's argument that NSA unreasonably evaluated its proposal under the performance requirements summary criterion. NSA has conceded that it had incorrectly determined that Carlson's proposal was technically unacceptable as to two other areas.

transition schedule that met the SOW's requirements and included all actions and milestones that had to occur to satisfy the timeframes specified in the PPI, and to provide a transition plan that included all actions and milestones that had to occur to provide a smooth transition from the incumbent to a successor vendor at the completion of the contract. PEC ¶¶ F.1.9-10.

The PPI required offerors to include an implementation schedule with major action items to be completed prior to start-up in accordance with the SOW; to explain how they would complete the transition from the current CTO; and to explain how they expected to provide a smooth transition to a successor vendor when the contract ended that maintained the SOW's performance requirements. PPI at 3. The SOW's performance requirements with respect to transition were specific and detailed.

Section 10 of the SOW described three types of transition requirements, including those associated with contract startup and those associated with agency transition, where the agency has switched contractors as a result of resolicitation. Section 10.2 of the SOW set forth seven specific procedures that were to be adhered to during the CTO transition. Among other things, the SOW required the outgoing contractor to transfer passenger name records (PNR) to the incoming contractor; maintain specified office hours for the last days of the contract for the purpose of PNR transfers and the removal and set-up of equipment; make all seminar and meeting arrangements for which requests were received prior to the end of the contract; provide the successor contractor with electronic or hard copies of all bookings and PNRs taken on or before the contract expiration date for travel taking place after the termination of the contract; provide the successor contractor with electronic or hard copies of all agency profiles, traveler subprofiles, and travel preference profiles in its possession; book all requests it received prior to contract expiration; and reconcile each account balance and settle each transaction dispute within 90 calendar days of the completed transition.

Carlson's proposal with respect to its implementation plan consisted of a three-paragraph narrative section and a three-page implementation plan in the form of a table of 70 line items.

The only substantive information in the narrative portion of the proposal states that, upon award, Carlson will meet with NSA to discuss and document the agency's workflow and business processes to ensure a smooth and efficient start-up. Topics for this meeting will include such things as booking requirements and traveler profile collection methods. Proposal at 28. The proposal also stated that the firm's implementation plan included "transition steps on line items 55 through 62 that ensure a complete transition from the incumbent CTO, as well as contract closure steps on lines 63 through 67 taken to ensure a smooth transition at contract end." Id.

Beside each of the 70 line item numbers on the implementation plan is the name of an event, task, or sub-task; a reference to the SOW as applicable; a duration time; and start and finish dates. The relevant portion of the table appeared as follows:

ID	Task Name	Start	Finish
55	TRANSITION REQUIREMENTS	11/9/00	11/29/00
56	CONTRACT START UP OVERVIEW MEETING	11/9/00	11/29/00
57	MILESTONE OVERVIEW PLAN LINES 5-66	11/10/00	11/10/00
58	MEETING SEE "Implementation Plan Section"	11/10/00	11/10/00
59	COORDINATION WITH INCUMBENT	11/10/00	11/13/00
60	NSA TRAVELER PROFILES	11/9/00	11/29/00
61	COLLECTION METHODS	11/9/00	11/9/00
62	INPUT TO CWT SYSTEM	11/9/00	11/29/00
63	CONTRACT CLOSURE PLAN	12/18/00	12/18/00
64	MEETING WITH NEW TRAVEL PROVIDER	12/18/00	12/18/00
65	PROFILES TRANSFER	12/18/00	12/18/00
66	TRAVELER RECORDS TRANSFER	12/18/00	12/18/00
67	TRANSITION OF STP AND GDS EQUIPMENT	12/18/00	12/18/00

NSA concluded that the contract closure plan in Carlson's table did not apply to the end of the solicited contract, as required, but to the end of the current contract. This belief was grounded in the fact that the start and finish dates next to the contract closure plan task and all of its sub-tasks was December 18, 2000, the anticipated implementation date for the instant contract, and the fact that the sub-tasks listed under Carlson's contract closure plan were those a firm must accomplish in order to implement a new contract. As a result, NSA viewed lines 55-67 of Carlson's implementation plan as identifying only what was to be done during the initial transition, not at contract closure. Technical Evaluation Document at 1. Since the RFP required offerors to explain both how they would complete the transition from the current CTO and how they expected to provide a smooth transition to a successor vendor when the contract ended that maintained the SOW's performance requirements, as described above, NSA found Carlson's proposal technically unacceptable.

Carlson contends that since the narrative portion of its proposal stated that lines 63-67 of its implementation plan pertained to the smooth transition of the contract at its end, and since line 63 is entitled Contract Closure Plan, it should have been evident to NSA that the December 18, 2000 date was a typographical error that could have been clarified by the agency prior to award. We do not agree.

If, as here, award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors. FAR § 15.306(a)(2). We have previously held that a contracting officer must give an offeror the opportunity to resolve minor or clerical

errors only where their existence is clear. A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5 n.6. Here, we are not persuaded that Carlson's imposition of the contract implementation date not once, but 10 times, in places where the agency expected to see a date perhaps 5 years into the future, was a minor or clerical error. The RFP specifically required offerors' transition plans to include all actions and milestones that had to occur to provide a smooth transition, and such milestones are inextricably tied to the dates set forth in the plan. Carlson was on notice to provide all required information in a "thorough and unambiguous manner," and the other language in the proposal indicating that these line items pertained to the contract closure plan was rendered ambiguous by the December 18, 2000 dates. The burden was clearly on Carlson to submit an initial proposal containing adequate information to meet the requirements associated with the contract closure plan, and the protester ran the risk of having its proposal rejected by failing to do so. Kahn Instruments, Inc., B-277973, Dec. 15, 1997, 98-1 CPD ¶ 11 at 8. Given the conflicting information in Carlson's proposal, we do not find the agency's evaluation unreasonable. PEMCO World Air Servs., B-284240.3 et al., Mar. 27, 2000, 2000 CPD ¶ 71 at 15.

Moreover, in response to Carlson's argument, the agency states that if it had assumed that the December 18, 2000 date was a typographical error, it would have considered the contract startup aspect of the firm's implementation plan to be technically unacceptable. NSA contends that two sub-tasks listed under Carlson's contract closure plan--profiles transfer and traveler records transfer--should also have been listed under the startup plan because they must be performed at that time as well. Since NSA had considered all of the tasks listed under Carlson's transition requirements line item to be part of the startup plan, it was able to find that plan technically acceptable. However, if it were now to understand the contract closure plan line item and its subtasks to actually be the contract closure plan, it would be unable to find that these two tasks were part of the startup plan, which would make the startup plan technically unacceptable.⁶

Carlson argues that line item 57, "Milestone Overview Plan Lines 5-66," incorporates lines 65 (Profiles Transfer) and 66 (Traveler Records Transfer) into the implementation plan, and that line items 60-62 (NSA Traveler Profiles, Collection Methods, and Input to CWT System, respectively) also apply to the implementation plan. As a result, Carlson argues that these tasks are included in the startup aspect of its implementation plan.

⁶ Although Carlson complains that this is a new theory for finding its proposal unacceptable, NSA's argument is merely a response to Carlson's protest argument that the December 18, 2000 dates in its chart were typographical errors.

The technical evaluation team leader states that line item 57 appeared to be an internal overview meeting. Statement at 1. In this regard, as noted above, Carlson's narrative stated that the firm planned to meet with NSA after award to discuss and document the agency's workflow and business processes, including such things as booking requirements and traveler profile collection methods. Since line item 57 does, in fact, appear to be a sub-task under the "Contract Start Up Overview Meeting" line item, we cannot fault the agency for reaching this conclusion. Lines 60-62 also appear to be sub-tasks falling under the "Contract Start Up Overview Meeting" line item, and NSA states that it interpreted this information to refer to an undertaking by Carlson to solicit NSA personnel for traveler preferences, rather than the action of receiving the incumbent's already-established profiles, since the narrative in Carlson's proposal only refers to a meeting with NSA. Agency Report at 4 n.4. When taken as a whole, we cannot agree with Carlson that its listing of these tasks in the manner it did met the RFP's requirements.

In its report, the agency further supports its position that Carlson's proposal was unacceptable under this criterion by arguing that it failed to include a reference to the SOW requirement to book all requests it received prior to contract expiration as a task under its contract closure plan. While Carlson is correct that this was not a contemporaneous basis for NSA's conclusion that its proposal was technically unacceptable, the record shows that NSA did not think that Carlson had proposed a contract closure plan at all during the evaluation process. The position now taken by NSA is both in response to Carlson's protest allegations and entirely accurate. In fact, given the RFP's unambiguous requirement that offerors "explain" how the CTO was expected to provide a smooth transition to a successor vendor when the contract ended that maintained the SOW's performance requirements, and the RFP's detailed recitation of those requirements, it is difficult to imagine how Carlson could have expected that the mere list of tasks it provided should have been sufficient for NSA to find its proposal technically acceptable.⁷

Finally, Carlson argues that the agency's November 22 request for FPRs, which accompanied amendment No. 0003, was tantamount to opening discussions. The protester asserts that since NSA should have known that its proposal was technically unacceptable at that time, it was required to engage in either clarifications or discussions with the firm.

The technical team leader states that some deficiencies were found in Carlson's proposal prior to November 22, but that it was not deemed technically unacceptable at that point because she was having ongoing discussions with the contracting

⁷ Carlson complains that Omega's proposal was found technically acceptable merely because it "parroted" the solicitation's requirements, but our review of Omega's proposal shows that the firm wove those requirements into an explanation of its plans; we have no basis to question the agency's evaluation.

officer regarding the evaluation team's findings. She states that the team felt it necessary to send amendment No. 0003 to all offerors on November 22 because a final decision had not yet been made as to which proposals were technically acceptable or unacceptable; the responses received to the amendment could lead to a determination that all proposals were technically unacceptable. Statement at 1. We have no basis to object to the agency's actions. There is no requirement that an agency hold discussions where the solicitation advises offerors of the possibility of award without discussions.⁸ FAR § 15.306(a)(3); Kahn Instruments, Inc., supra, at 8. Moreover, an agency is not required to remind an offeror to submit certain information with its final offer when that information is, as here, specifically called for in the solicitation. Dynamic Sys. Techs., Inc., B-253957, Sept. 13, 1993, 93-2 CPD ¶ 158 at 6.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

⁸Carlson also argues that NSA was obligated to seek "clarifications" before eliminating its proposal from the competitive range, citing FAR § 15.306(b), but NSA did not establish a competitive range here.