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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: AHNTECH Inc.

File: B-291044

Date: October 10, 2002

Sam Ahn for the protester.

M. Lee Kristeller Johnson, Esq., and Barbara Amster, Esq., Department of the Navy, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly found proposal unacceptable and therefore excluded it from competitive range is denied where protester based staffing on table in solicitation showing that a minimum of 19 on-site personnel were required for certain tasks; table did not purport to cover all tasks included in solicitation's scope of work and solicitation required offerors to propose sufficient personnel, both on-site and off-site, to perform multitude of tasks.

DECISION

AHNTECH, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00244-02-R-0001, issued by the Fleet and Industrial Supply Center, Department of the Navy, for logistics and support services at various sites worldwide. AHNTECH asserts that the agency's technical evaluation was flawed.

We deny the protest.

The RFP sought offers for logistics and support services for the Fleet Technical Support Center, Pacific, under Office of Management and Budget (OMB) Circular A-76. The work encompassed by the performance work statement (PWS) included operation and management of functions comprising integrated logistics support (ILS), and other support services, including financial, travel, payroll, automated information system (AIS), administrative, secretarial, maintenance documentation, and management analysis functions. The geographical and functional scope of the effort was to include seven bases in California, Hawaii, Washington, Japan, and

Singapore. The RFP contemplated selection of one private sector proposal, considered the “best value,” for a later cost comparison with an in-house plan.

Proposals were to be evaluated on the basis of three factors: technical performance plan; past performance; and price. The technical factor was significantly more important than past performance, and both factors combined were approximately equal to price. The RFP provided that an unacceptable rating under either the technical or past performance factor could result in the entire proposal being determined unacceptable.

Several proposals, including AHNTECH’s, were received, and were evaluated by the technical evaluation board (TEB).¹ As to AHNTECH’s proposal, the TEB found:

AHNTECH’s proposal is rated as unacceptable. The proposed staffing level of 19 personnel detrimentally affects all areas of the evaluation including all five subfactors: organizational structure, staffing, operating procedures, transition plan, and [quality assurance/quality control] plan. By proposing only 19 personnel to meet all the requirements of the PWS, it is the consensus of the TEB that AHNTECH lacks a reasonable or comprehensive understanding of the performance obligations under this contract. . . . There are no technically acceptable scenarios which can be performed using only 19 personnel.

Technical Evaluation Report at 1. The contracting officer agreed with the TEB’s evaluation, and eliminated AHNTECH’s proposal from the competitive range on the basis that its technical approach and failure to comprehend the “big picture” of the requirement rendered the entire proposal unacceptable. In this regard, some 131 employees will be affected by this procurement as reported in the Navy’s Federal Activities Inventory Reform Act notice. Agency Report (AR) at 10, Tab 11. After receiving notice of its proposal’s exclusion, and a debriefing, AHNTECH filed this protest challenging the elimination of its proposal from the competitive range.²

¹ Because the evaluation of proposals is ongoing, the number of offers received is not disclosed in this decision.

² AHNTECH initially challenged the TEB’s negative evaluation of its past performance under a prior contract; it claimed that the TEB should have considered a more current, and positive, record of its past performance. Protest at 4. As indicated in the letter notifying AHNTECH of its proposal’s rejection, and as further explained by the contracting officer in the agency’s report, AHNTECH’s proposal was eliminated based solely on the technical factor evaluation. AR, Tab 4; Contracting Officer’s Statement ¶ 13. AHNTECH has not challenged this explanation; accordingly, we consider this allegation abandoned. Analex Space Sys. Inc.; PAI Corp., B-259024, B-259024.2, Feb. 21, 1995, 95-1 CPD ¶ 106 at 9.

The determination of whether a proposal is in the competitive range is principally a matter within the discretion of the procuring agency. Dismas Charities, Inc., B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. Our Office will review an agency's evaluation of proposals and determination to exclude a proposal from the competitive range for reasonableness and consistency with the criteria and language of the solicitation and applicable statutes and regulations. Novavax, Inc., B-286167, B-286167.2, Dec. 4, 2000, 2000 CPD ¶ 202 at 13. Here, we conclude that the evaluation of AHNTECH's proposal and its exclusion from the competitive range were reasonable and consistent with the solicitation.

AHNTECH's protest is based on its understanding of a table included in the PWS under the heading "personnel," which was identified as representing "the minimum on-site staffing requirements by site," and listed a total of 19 personnel. PWS § C.1.3.4. AHNTECH maintains that, since the table represents the minimum personnel requirements, it was improper for the agency to eliminate its proposal from the competitive range based on its staffing of 19 personnel.

This argument is without merit. The RFP required offerors to propose to "provide qualified personnel to accomplish all contract requirements." PWS § C.1.3.4. While the table on which AHNTECH relies was included as part of this same PWS section, it clearly established only the minimum "on-site" staffing requirements. Id.; AR, Tab 12, at 1. The PWS also contemplated the use of off-site personnel (§ C.1.3.6), and anticipated that personnel "frequently" would have to perform various ILS tasks on board Navy ships and submarines (§ C.5.1). That the table was not intended to encompass all PWS requirements is plain from its face; of more than 30 different tasks detailed in the PWS, the table included only 10 tasks, and identified no tasks or personnel for 3 of the sites. PWS § C.1.3.4.

In this regard, other sections of the PWS made clear that successful performance required far in excess of 19 personnel. For example, the PWS described five categories of specific tasks: ILS; financial, travel, payroll support; AIS support; administrative, secretarial, and maintenance documentation support; and management analysis services. PWS §§ C.5.1-C.5.5. The description of the more than 30 tasks within these categories filled 27 pages of the PWS. PWS at 15-44. In addition, the PWS advised offerors of the annual expected workload for each task, the magnitude of which clearly exceeded the capability of 19 persons. PWS app. 9. For example, at seven worldwide performance sites, and apart from significant surge requirements, the contractor was expected annually to complete more than 2,100 ILS related certifications, analyses, reviews, validations, and inventories; accomplish more than 2,800 occurrences of design, redesign, and training for new and existing applications in AIS support; make more than 12,000 estimated stops in transportation services of personnel and equipment; daily handle 470 pieces of incoming and outgoing pieces of mail, messages, faxes, e-mails, and express mailings; and print, stock, assemble, and distribute more than 6 million pages/22,990 CDs of documents. Id. In view of the extensive scope of tasks and associated need for staffing to

perform them, the agency reasonably concluded that the protester's proposal of only 19 persons was technically unacceptable.³

The protester asserts that the agency misled it. Specifically, prior to submitting its proposal, AHNTECH asked the agency about the number of civilians and military personnel at each location. In response, the agency merely referred AHNTECH to the RFP; AHNTECH claims it was misled by the agency's failure to provide more specific information on the number of personnel required.

This assertion is without merit. Because the agency viewed AHNTECH's question as seeking business sensitive information related to the Navy's in-house plan in this A-76 procurement, the agency referred the protester to the RFP. There was nothing improper in the agency's response. Where, as here, staffing is an evaluation factor in an A-76 procurement, an agency properly may evaluate proposals on the basis of an undisclosed estimate of adequate staffing. Gemini Indus., Inc., B-281323, Jan. 25, 1999, 99-1 CPD ¶22 at 3. Since the PWS clearly outlined the scope of work to be performed and contained historical data on the extent of the required tasks, we believe the RFP provided sufficient information on which AHNTECH could base its proposal. To the extent AHNTECH believed the agency had not provided sufficient information regarding necessary staffing to meet the PWS requirements, the agency's refusal to provide more specific information in response to AHNTECH's question provided AHNTECH with grounds to protest at that time, prior to the closing time for receipt of proposals. AHNTECH's attempt to raise the issue now is untimely. Bid Protest Regulations, 4 C.F.R. § 21.1(a)(1) (2002).

The protest is denied.

Anthony H. Gamboa
General Counsel

³ To the extent AHNTECH argues that the PWS was ambiguous, the protest also is without merit. An ambiguity only exists if specifications are subject to more than one reasonable interpretation. Vitro Servs. Corp., B-233040, Feb. 9, 1989, 89-1 CPD ¶ 136 at 4. To be reasonable, an interpretation must be consistent with the solicitation, read as a whole and in a reasonable manner. Captain Hook Trading Co., B-224013, Nov. 17, 1986, 86-2 CPD ¶ 566 at 3. Any assertion that the table in question was intended to set forth the entire personnel requirement is unreasonable. As discussed above, the table was intended for the limited purpose of outlining the on-site minimum personnel requirement, and was clearly denoted as such. The RFP otherwise clearly outlined an extensive scope of work far exceeding that encompassed by the table.