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United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Transventures International, Inc.

File: B-292788

Date: November 4, 2003

D. John Won for the protester.

Sandra M. De Balzo, Esq., Drug Enforcement Administration, for the agency.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal and exclusion of proposal from competitive range is denied where agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

Transventures International, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) DEA-02-R-0004, issued by the Drug Enforcement Administration (DEA) for language-related services in support of the DEA, Miami Field Division. Transventures contends that the DEA improperly evaluated its proposal.

We deny the protest.

The DEA explains by way of background that its mission of enforcing the federal narcotics laws requires that the agency have the capability to understand numerous foreign languages so that it can translate, monitor, transcribe, and intercept conversations in connection with the unlawful growing, manufacture, or distribution of controlled substances. See Agency Memorandum of Law at 1. One way the DEA intercepts conversations is through court-ordered nonconsensual telephonic monitoring, termed the Title III program. See RFP § C.2. To ensure its ability to meet these needs, the agency issued the solicitation at issue here, seeking a contractor "who shall be responsible for the delivery of all management, supervision and manpower required to perform a variety of language related services including monitoring, translating, transcribing and interpreting services" RFP § C.3. The

RFP advised that the majority of linguistic work would be for Spanish, but also identified more than 100 other possible required languages. See RFP § J, attach. E.

The RFP, issued on April 23, 2002, provided for the award of an indefinite-delivery, indefinite-quantity contract with fixed hourly rates for a base period of 1 year and up to four 1-year options, to the offeror whose proposal represented the “best value” to the government. RFP §§ B.1, B.2, M.2.1. Section M of the solicitation identified the following three technical evaluation factors in descending order of importance: (1) management plan; (2) quality control plan; and (3) transition plan. Under the management plan factor, the RFP identified three separate subfactors: (a) furnishing qualified personnel; (b) recruiting and retention; and (c) security plan. Technical capability was considered “substantially more important than cost.” RFP § M.4.3. Section M further provided that offerors were to submit past performance information, which would be used to assess an offeror’s performance risk (its likelihood of successful performance of the solicitation requirements). RFP § M.3.

Regarding the management plan’s second subfactor, recruiting and retention, section M explained that offerors were required to demonstrate their ability to recruit and retain qualified personnel through various efforts and, by way of example, identified “subcontractor agreements, teaming arrangements and other initiatives to provide a pool of qualified personnel on a continuous basis.” RFP § M.2.1. It further required offerors to identify their programs and incentives to recruit and retain cleared and qualified personnel for the various languages under the contract.

Under the second technical evaluation factor, quality control plan, offerors were required to develop a “plan for this effort and define implementation of the plan that ensures that the services described in the solicitation are accomplished accurately, capably, and timely” Id.

The third technical evaluation factor, transition plan, required offerors to define a plan for the transfer of the Miami Field Division’s current linguist support to the offeror’s workforce with minimal disruption to the agency mission and to demonstrate how they will ensure continuity of support during the transition period. Id.

While reserving the right to conduct discussions with offerors, the solicitation advised that the government intended to evaluate proposals and award a contract without discussions and, as a consequence, also advised that initial proposals should contain the offerors’ best terms from a cost/price and technical standpoint.

The DEA received several proposals by the amended September 8, 2003 closing time, including a proposal from Transventures.¹ See RFP amend. 6. Upon receipt of the proposals, the agency convened a technical evaluation panel (TEP), composed of three individuals, to evaluate the offerors' technical proposals pursuant to the agency's technical evaluation plan. This plan directed the TEP to evaluate the offerors' ability to demonstrate compliance with the technical evaluation factors and subfactors, evaluate their past performance, and provide an overall rating for each proposal of either acceptable, susceptible of being made acceptable, or unacceptable. See Agency Report (AR), Tab 4, Technical Evaluation Plan, app. B.

Based on its evaluation of Transventures' proposal, the TEP identified various strengths and weaknesses and assigned a consensus score for each technical factor and subfactor, as well as for Transventures' past performance.² Transventures' proposal received a total consensus score of 78 points: 24 out of 30 points for its management plan (8 out of 10 points for each subfactor); 21 out of 26 points for its quality control plan; 15 out of 24 points for its transition plan; and 18 out of 20 points for its past performance.³ The TEP also rated Transventures' proposal, overall, as unacceptable.

After receiving the TEP's evaluation report, the contracting officer established a competitive range and eliminated Transventures' proposal from the competition because she concluded that Transventures could not improve its technical score substantially through discussions. After eliminating it from the competitive range, the DEA provided Transventures with a written debriefing. In the debriefing, the DEA highlighted various strengths and weaknesses under the technical evaluation

¹ The protester here proceeded pro se and thus did not have access to certain information in the record subject to protection from disclosure other than to counsel pursuant to the terms of a protective order. Accordingly, our discussion in some areas is necessarily general in nature in order to avoid reference to protected information (such as the number of proposals received). Our conclusions, however, are based on our review of the entire record.

² The total possible score an offeror could receive was 100 points. Technical factor 1, management plan, had a maximum of 30 points (10 points for each of the three subfactors); technical factor 2, quality control plan, had a maximum of 26 points; and technical factor 3, transition plan, had a maximum of 24 points. A maximum of 20 points were available under the past performance evaluation factor. On the individual evaluators' technical score sheets, these point scores also corresponded to adjectival ratings of excellent, good, satisfactory, minimally satisfactory, or unsatisfactory (e.g., 15 points or less under the transition plan factor would have corresponded to an unsatisfactory rating).

³ Transventures' total score of 78 points was the second lowest total score received by any offeror.

factors and the past performance factor, and included a summary rationale for eliminating Transventures from the competitive range. In this summary, the contracting officer noted that Transventures' proposal lost several points in two technical areas, quality control plan and transition plan. With regard to the quality control plan, the contracting officer stated that Transventures' proposal did not explain how its plan would be "implemented in the translation/Title III environment" and that there was little detail referring to translation work. Protest, attach., Debriefing, Aug. 23, 2003. With regard to Transventures' transition plan, the summary stated that Transventures' transition plan "was not identified adequately for the technical evaluation panel to conduct a complete evaluation." Id. Transventures thereafter timely filed this protest objecting to the exclusion of its proposal from the competitive range.

The determination of whether a proposal should be included in the competitive range is principally a matter within the reasonable discretion of the procuring agency; in reviewing such a determination, we will consider only whether the documented evaluation was fair and reasonable and consistent with the evaluation criteria and procurement statutes and regulations. DSC Cleaning, Inc., B-292125, June 25, 2003, 2003 CPD ¶ 118 at 3. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of award. Federal Acquisition Regulation § 15.306(c)(1); DSC Cleaning, Inc., supra.

In this case, Transventures argues that the agency unreasonably evaluated its proposal with respect to each technical evaluation factor and the past performance factor, and specifically challenges each weakness noted in its debriefing.⁴ While not all of the issues are discussed here, we have reviewed the entire record and conclude that the agency's evaluation of Transventures' proposal was consistent with the

⁴ It appears that Transventures' debriefing included statements addressing proposal weaknesses that were not identified as weaknesses in the TEP consensus evaluation or considered by the contracting officer as part of her competitive range determination. For example, under the management plan factor, the debriefing notes, as a weakness, that Transventures' "training requirements are minimal." This concern, however, does not appear in the TEP report, nor does it appear as part of the competitive range determination. With regard to those weaknesses highlighted in Transventures' debriefing but without foundation in the contemporaneous record, while the agency fails to address the discrepancy, these weaknesses were not part of the DEA's competitive range determination and we therefore do not address Transventures' challenges on these grounds.

evaluation criteria and that the DEA reasonably excluded Transventures from the competitive range.⁵

For example, the contracting officer noted as part of her competitive range determination that Transventures' proposal failed to clearly identify or elaborate on retention incentives. While Transventures argues that there was no requirement to explain its recruitment and retention incentives, this position is belied by the express terms of the RFP, which, as noted above, states, under the recruiting and retention subfactor, that "[t]he contractor shall identify programs and incentives to recruit and retain cleared, and qualified personnel for the various languages anticipated." RFP § M.2.1. (emphasis added).

The issues raised by Transventures concerning the DEA's evaluation of its quality control plan are similarly without support in the record. The DEA significantly downgraded Transventures' proposal under this factor because its plan lacked direct application to the RFP's requirements. Specifically, the contracting officer noted that Transventures' quality control plan "appears to be a company standard document as there is no specific reference to translation services nor implementation guidance, as stated in the RFP." AR, Tab 7, Competitive Range Determination, Aug. 8, 2003, at 5. The TEP also noted, in essence, that the plan did not address wire room (Title III) requirements or how unusual translation situations would be handled (i.e., how it would handle exotic language requirements). AR, Tab 6, Technical Evaluation Report, Aug. 26, 2003, at 15.

Transventures argues that these weaknesses were improperly attributed to its proposal because the RFP did not require offerors to specifically adapt their quality control plans for translation of Title III requirements or to explain procedures for handling unusual or exotic languages. Transventures further contends that, to the extent clarifications were needed, the DEA could have held discussions to "amplify our procedures." Protest at 2. Contrary to Transventures' assertions, however, the RFP required that the quality control plan directly address the work under the solicitation (which included Title III translating and the need for translation services of many languages other than Spanish) and informed offerors that their plans would be evaluated based on their ability "to meet all of the requirements under the contract." RFP § M.2.1. (emphasis added). Because our review of Transventures' proposal confirms the agency's conclusions that Transventures only addressed the quality control plan in a general sense and that it did not explain how the plan would meet the particular requirements set forth in the RFP, we conclude that the DEA reasonably evaluated Transventures' proposal with respect to this factor.

⁵ We note that rather than filing comments responding to or seeking to rebut the points articulated by the agency in its report, Transventures indicated in its comments that it was relying on the assertions in its protest.

With regard to Transventures' other point, that the DEA could have held discussions to further clarify its proposal, as noted previously, the RFP specifically provided that the DEA intended to make award without discussions. Therefore, it was incumbent upon Transventures to submit a complete proposal, one that clearly addressed the requirements of the RFP without the need for discussions. See AMS Mech. Sys., Inc., B-281136, B-281136.2, Jan. 4, 1999, 99-2 CPD ¶ 59 at 9-10.

Transventures also complains about the DEA's evaluation of its transition plan and asserts that the agency's requirement for a transition plan placed an undue burden on offerors. As an initial matter, Transventures' challenge that the transition plan was unduly burdensome is untimely since it is directed against the terms of the solicitation and, under our Bid Protest Regulations, should have been raised prior to the time set for the receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (2003).

As to the DEA's evaluation, it is clear that the DEA reasonably downgraded Transventures' proposal for failing to include a separate transition plan. The RFP expressly required offerors to include a defined plan for transferring the Miami Field Division's current linguist support to the offeror's workforce with minimal disruption to the agency mission and required offerors to demonstrate how they would ensure continuity of support during the transition period. When the contracting officer made her competitive range determination, she highlighted the fact that Transventures failed to include a clear transition plan; the TEP similarly faulted Transventures' proposal for failing to include a clearly identified plan.

Without specifically addressing the fact that it did not include a separate section dedicated to the transition plan requirement, Transventures contends that its proposal essentially complied with this requirement, first, by providing that the firm would retain displaced personnel by offering a right of first refusal to current employees and would arrange for temporary corporate transition support to fill any position until a permanent employee can be hired, and, second, by referencing the firm's ability to furnish and recruit qualified personnel. The agency correctly points out, however, that these statements merely address personnel recruitment issues. They do not address how Transventures will minimize disruption to the agency's mission, nor do they explain how Transventures will ensure continuity of support. Under these circumstances, we have no basis to object to the DEA's evaluation of Transventures' proposal in this regard.

As a final matter, Transventures' challenge to its past performance evaluation is without merit. Transventures specifically argues that the agency did not consider the experience of its key personnel or the past performance of the members of the joint venture.⁶ The record, however, clearly reflects that the TEP, based upon the

⁶ Transventures is a joint venture among three companies: Hurricane Consulting, Inc., ALT Services, Inc., and Linguistic Consulting Enterprises, Inc.

information Transventures submitted for its key personnel and its joint venture members, awarded Transventures 18 out of 20 points under the past performance factor (the equivalent of a “good” rating according to the individual evaluators’ score sheets). The TEP noted that Transventures’ list of contracts was “impressive,” it had highly rated performance surveys, it showed substantial experience in translation and transcription, and its experience was pertinent. AR, Tab 6, Technical Evaluation Report, at 15-16. The TEP, however, did not award Transventures the maximum past performance score because Transventures’ past performance surveys were from individual members of the joint venture, not Transventures. The contracting officer stated that while the agency considered the past performance references from the individual members of the joint venture, “the lack of reference for the venture itself left some doubt for the TEP as to the capability of the entire venture.” AR, Tab 2, Contracting Officer’s Statement at 6. Because an agency may reasonably consider the experience of the individual members of a joint venture, and at the same time, consider the lack of experience of the joint venture itself, see ITT Federal Servs. Int’l Corp., B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 14, there is no basis for disturbing the agency’s evaluation of the protester’s past performance here.

The protest is denied.

Anthony H. Gamboa
General Counsel