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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Worldwide Primates, Inc.

File: B-294481

Date: October 12, 2004

Brooke Block for the protester.

Douglas Kornreich, Esq., and Doris Gibson, Department of Health and Human Services, for the agency.

Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where an agency reasonably eliminated the protester's proposal from the competitive range because, even after discussions, the protester failed to submit a proposal that addressed the solicitation requirements.

DECISION

Worldwide Primates, Inc. protests the award of seven contracts by the Department of Health and Human Services, National Heart, Lung, and Blood Institute (NHLBI) under request for proposals (RFP) No. NHLBI-PS-2003-079. Worldwide primarily argues that the agency's evaluation of its proposal as technically unacceptable was unreasonable.

We deny the protest.

On July 30, 2003, NHLBI issued the RFP, seeking proposals to supply non-human primates, and to provide shipping, testing, and holding services for the animals. RFP § B.1. The RFP contemplated multiple awards of indefinite-delivery, indefinite-quantity contracts. The procurement was conducted under the procedures for evaluation of commercial items in Federal Acquisition Regulation (FAR) Part 12.

The RFP contained FAR § 52.212-2(a), specifying that award would be made "to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered" and then specified weights for enumerated non-price criteria. RFP at 27-28. The RFP identified the following technical evaluation factors: demonstrated understanding of the magnitude and scope of work in the proposed technical approach (25 points); the

availability, competence and experience of the proposed technical personnel directly involved in the contract (20 points); appropriateness and availability of the necessary facilities to perform the work (20 points); past performance (20 points); and proposed method of assuring the achievement of timely and acceptable delivery of animals and services (15 points).

As an addendum to that provision, entitled “selection of offerors,” the RFP stated as follows:

Best-Buy Analysis. A final best-buy analysis will be performed taking into consideration the results of the technical evaluation, cost analysis, and ability to complete the work within the Government’s required schedule. The Government reserves the right to issue an order to the best advantage of the Government, technical merit, cost, and other factors considered.

RFP at 28.

The RFP also required a “detailed work plan . . . indicating how each aspect of the . . . work is to be accomplished,” and advised inclusion of “as much detail as you consider necessary to fully explain your proposed technical approach or method.” The RFP required that the technical plan include information on how the project would be organized, staffed, and managed. RFP at 29. The RFP also cautioned that

[p]lans which merely offer to conduct a program in accordance with the requirements of the Government’s scope of work will not be eligible for further consideration. The offeror must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

Id.

Nine firms submitted proposals. The initial proposal from Worldwide consisted of a two-page submission accompanying the government-required forms from the RFP package. Worldwide stated that “[o]ur technical plan as such is below. Since no research is required as part of the proposal, we are somewhat limited as to presenting a detailed plan since this is a straightforward purchase of primates.” Agency Report (AR), Tab 3, Proposal Cover Letter, at 1. The remainder of the submission, consisting of several paragraphs, identified one employee and provided several references. Id. at 1-2. In light of Worldwide’s failure to provide a proposal responsive to the solicitation requirements, the agency evaluators assigned Worldwide’s proposal a total score of 5 points (out of a possible 100 points). AR, Tab 4, Technical Evaluation Summary Statement, at 11.

The agency determined that only two proposals were acceptable after the initial review and would be included within the competitive range. AR, Tab 5, Determination to Conduct Communications with Offerors Before Establishment of

Competitive Range, at 3. The agency concluded, however, that establishing a competitive range of only those two proposals would not satisfy the agency's need to make as many awards as possible. Id. At the same time, the record shows that the agency concluded that it lacked sufficient information to include any other proposals in the competitive range. Id. at 2. Therefore, the agency determined that it would conduct communications with offerors (including Worldwide) prior to establishing a competitive range. Id. at 3.

Notwithstanding the agency's decision to conduct communications prior to establishing a competitive range, the record shows the agency's e-mail sent to Worldwide stated that the firm had been included within the "competitive range." Contracting Officer's Statement at 5. The e-mail also stated that the responses "will be considered Final Proposal Revisions." AR, Tab 6, E-mail from Agency to Protester (Nov. 4, 2003, 2:57 p.m.). The agency report to our Office includes copies of the transmittals to the seven successful offerors and the protester, which show that those offerors, including the two top-ranked offerors (whose presence in the competitive range was already certain), received essentially the same notice. Further, in each case, the offerors were asked to submit revised proposals responding to substantive questions concerning their initial proposals. AR, Part II. Thus, it appears from the record that the agency established a competitive range of all of the offerors' proposals and conducted discussions with all of the offerors.

As relevant here, the agency, through its questions to Worldwide, invited Worldwide to provide the required information concerning its technical approach that it had failed to include in its initial proposal. For example, Worldwide was asked to identify the staff it proposed for this contract and to furnish the staff's qualifications and experience, to describe the facilities it proposed to use to support the contract, and to describe its understanding of the scope of work and the methods it proposed to use to meet RFP requirements. Worldwide's response by e-mail, approximately one standard page in length, provided summary responses to the questions. For example, concerning the agency's request for staffing information, Worldwide responded that its "staff have been found competent and have many years experience in this field." AR, Tab 7, E-mail from Protester to Agency (Dec. 8, 2003, 10:15 a.m.). Concerning its facility, Worldwide responded that "[o]ur facilities are licensed and inspected by the regulatory agencies charged with licensing this company," and "has had zero deficiencies as a result of [these] inspections." Id.

Since Worldwide again failed to provide any detailed explanation of how it would perform the contract, the agency found Worldwide's proposal technically unacceptable and excluded it from further consideration. Contracting Officer's Statement at 5-6. The record shows that, after evaluating all of the revised proposals, the agency established a competitive range of seven offerors, or, more accurately, it narrowed the existing competitive range to seven. The agency conducted another round of discussions with these offerors and received further proposal revisions. After determining that all seven firms had submitted technically acceptable proposals, the agency awarded contracts to these firms.

Worldwide subsequently was simultaneously notified of its proposal's exclusion from the competitive range, and of the contract awards. Protest at 1. Worldwide then protested the agency's actions. In its protest, Worldwide argues that the agency misevaluated Worldwide's proposal as technically unacceptable. Protest at 1-2. As discussed below, we disagree.

In its comments on the agency's report, Worldwide acknowledges that "[t]he Agency requested us to 'explain' our understanding of the scope of work" and that, in response "we indicated that this is stated very explicitly in the RFP and we intend to comply with it." Protester's Comments at 2. Worldwide asserts that the agency should have considered the various licensing and governmental oversight schemes to obviate the need for it to respond in detail to those aspects of the solicitation. Worldwide points out that that "[a]nyone submitting a proposal must be licensed by several agencies, comply with various regulations and policies, utilize testing laboratories approved by the Project Officer, supply certain animals of very specific sex, weight, and country of origin, and guarantee the animals for a period post delivery," and only approximately ten commercial entities have the requisite authorizations to import and quarantine non-human primates. Protester's Comments at 2. Therefore, Worldwide argues, since the contract required contractors to possess the requisite licenses and inspections, and since Worldwide has significant experience as an authorized supplier of non-human primates, it should have been considered acceptable by the evaluators. Id.

Here, in order for a proposal to be evaluated as technically compliant, the RFP mandated that an offeror provide detailed information concerning its technical approach to meeting the RFP requirements, including a discussion of its proposed staff, their qualifications and experience, the offeror's facilities, and its methods for satisfying the RFP requirements.¹ As Worldwide itself appears to recognize, even after discussions its proposal lacked requisite detailed information concerning its technical approach. As a result, and consistent with the terms of the RFP, this omission reasonably rendered Worldwide's proposal noncompliant with the terms of the RFP. The cursory general assurances that it could perform the work did not comport with the RFP's specific requirement for detailed information. Under these circumstances, the agency reasonably found Worldwide's proposal lacked required information and was technically unacceptable.² See, e.g., Wyle Labs., Inc., B-260815.2, Sept. 11, 1995, 95-2 CPD ¶ 187 at 5.

¹ To the extent that the protester believes that the agency was overstating its requirements by requesting such information, an objection to the terms of the solicitation had to be filed prior to the closing time for submission of initial proposals in order to be timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a) (2004).

² Contrary to Worldwide's assertion in its protest, referral of a small business concern's to the Small Business Administration for consideration under the

(continued...)

Under these circumstances, we have no basis to object to the reasonableness of the agency's rejection of Worldwide's proposal as technically unacceptable and, as a consequence, the agency's removal of Worldwide's proposal from the competitive range.³

The protest is denied.⁴

Anthony H. Gamboa
General Counsel

(...continued)

certificate of competency procedures is not required where, as here, the rejection of that concern's proposal is for reasons not related to responsibility. SBS Tech. Servs., B-259934, Apr. 19, 1995, 95-1 CPD ¶ 205 at 5.

³ Our Office reviewed (in camera, due to the absence of a protective order) the proposals of the firms awarded contracts, and we note that in contrast to Worldwide's, the successful proposals contained comparatively detailed descriptions of their proposed approaches.

⁴ Worldwide also complains that the agency improperly delayed notifying the protester of its exclusion from the competitive range, and of the award of the contracts. The agency acknowledges that the notifications to Worldwide were untimely. Worldwide was excluded from the competitive range April 20, and contracts were awarded on June 1. Contracting Officer's Statement at 2. The contracting officer explains that she delayed notification until early August in order to be able to include a "debriefing" with the notice to Worldwide. Contracting Officer's Statement at 7. This delay appears inconsistent with 41 U.S.C. § 253b (2000) and FAR Subpart 15.5, and the contracting officer states that she "regrets the delay . . . and recognizes that this approach is not appropriate for future acquisitions." Id. Worldwide states that an earlier notification would have resulted in both an earlier protest, and unspecified "other avenues that [it] could have availed itself of, which are much less effective post award." Protester's Comments at 1. Notwithstanding the agency's delay in notifying Worldwide, the protester has not shown, especially in light of our discussion above, how the agency's failure to give it timely notice prejudiced the firm's chances for award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).