



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Meeks Disposal Corporation

File: B-299576; B-299576.2

Date: June 28, 2007

J. Bryan Plumlee, Esq., Paul R. Schmidt, Esq., and David B. Oakley, Esq., Huff, Poole & Mahoney, PC, for the protester.

Joseph M. Goldstein, Esq., and Michael J. McAllister, Esq., Shutts & Bowen LLP, for Dorado Services, Inc., an intervenor.

Damon A. Martin, Esq., and David L. Nimmich, Esq., Department of the Navy, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably determined that protester's proposal was unacceptable under technical approach/management factor is denied where the solicitation required that the proposals include a description of the methods and procedures the offeror would use to recruit and retain experienced personnel and managers, but protester provided only a brief and general statement on the subject.

DECISION

Meeks Disposal Corporation, a small business, protests the award of a contract to Dorado Services by the Naval Facilities Engineering Command, Department of the Navy, under request for proposals (RFP) No. N40085-06-R-1131, issued to procure refuse collection and recycling services at specified Navy facilities in the Hampton Roads, Virginia area. Meeks objects that its proposal was improperly evaluated as technically unacceptable, and that the Navy based the evaluation on criteria that were not disclosed in the solicitation.

We deny the protest.

BACKGROUND

The Navy issued the RFP on September 13, 2006, seeking proposals to provide these waste management services under what the agency terms a "combination firm-fixed

price/indefinite quantity-indefinite delivery”¹ contract to perform a number of waste management services for a base period and four annual options. RFP at 74. The RFP detailed four evaluation factors: technical approach/management, corporate experience, past performance, and price. RFP at 71.

After generally advising offerors to submit a “precise, detailed, and complete” proposal, RFP at 70, the RFP went on to explain the evaluation of the technical approach/management factor using very similar language in both sections L and M. Specifically, each offeror was instructed to

clearly demonstrate its understanding of and approach to accomplishing the complexity and magnitude of service requirements set forth in the performance objectives and standards of the Performance Work Statement by submitting a narrative statement . . . Each of the four paragraphs below must be included in the narrative and tabbed in the technical proposal and discussed separately for each technical annex of the RFP.

(a) Phase-In Transition Plan . . .

(b) Describe what methods and procedures you will use to recruit and retain experienced personnel and managers in regards to this project.

(c) Workforce Management . . .

(d) Government-Furnished Property . . .

RFP amend. 12, at 5-6.

The evaluation scheme provided that proposals would be assessed as “acceptable,” “less than acceptable,”² or “unacceptable” under each factor (with the addition of a

¹ See Naval Facilities Engineering Command Contracting Manual (P-68) § 5252.216-9310 (Dec. 2000 edition) (available online at <https://portal.navfac.navy.mil/pls/portal/url/ITEM/FBCB61789B9622D4E0340003BA194E27>) (last visited June 26, 2007).

² The RFP defined “less than acceptable” thus:

The proposal does not fully meet some or all of the performance objectives and standards. The proposal lacks information or contains conflicts with solicitation requirements. The proposal contains some weaknesses, significant weaknesses, or deficiencies that must be corrected before further consideration. The proposal offers a moderate to high performance risk to the Government.

(continued...)

“neutral” rating for the past performance factor). In effect, a rating of “less than acceptable” reflected a proposal that was unacceptable as tendered, but susceptible of becoming acceptable through revisions after discussions. Award was to be made to the lowest-priced, technically acceptable offeror. RFP amend. 12, at 11-13.³

The agency received five proposals, including those submitted by Dorado and Meeks. The Navy evaluators prepared a technical evaluation report to reflect their views of each offeror’s proposal under each evaluation factor. The evaluators rated Meeks less than acceptable under the technical approach/management, experience, and past performance factors, resulting in an overall rating of less than acceptable. Dorado was rated acceptable under all factors, and acceptable overall. Technical Evaluation Board (TEB) Report at 3. The evaluators also explained their consensus ratings for each offeror under each factor, and listed any evaluated strengths, weaknesses, or deficiencies under each factor.

Under the technical approach/management factor, although the evaluators praised Meeks’s detailed phase-in plan and thorough phase-out plan, they identified several concerns, including that “Meeks did not provide specifics on recruitment . . .” TEB Report at 7. Correspondingly, the evaluators enumerated four weaknesses for Meeks under the technical approach/management factor, two of which related to recruitment and retention. On these issues, the evaluators concluded:

1. Recruit and retain plan did not provide any details how they plan to recruit and retain employees.
2. They discuss their current workforce and management, but did not discuss how they planned to staff for this RFP and retain existing personnel.

Id. at 7.

(...continued)

RFP amend. 12, at 12. The rating of “unacceptable” was to be applied to a proposal with “no reasonable likelihood of success” and flaws “so major or extensive that a major revision tantamount to complete rewrite of the proposal would be needed.” Id.

³ In amendment 11, the Navy deleted section M.1 of the RFP, which was the section that had specified that “[t]he government will select the lowest price-technically acceptable offer whose proposal provides the best value to the Government.” RFP at 76; RFP amend. 11, at 25. None of the offerors challenged this change. Since the RFP, as amended, still specified that evaluation subfactors would use ratings of “acceptable,” “less than acceptable,” and “unacceptable,” since no offeror has challenged the basis for award; and, since the source selection decision reflects that award was made on a lowest-price, technically acceptable basis, we will not address the effect of the amendment here.

The source selection board (SSB) concurred with the TEB's findings, including the conclusion that Meeks's proposal was less than acceptable under the technical approach/management factor. The SSB also concluded that, among other things, Meeks's recruitment and retention plan lacked details. SSB Report at 6. As a result, the SSB recommended award to Dorado as the lowest-priced, technically acceptable offeror, as reflected in the following summary of the evaluation (A=acceptable; LA=less than acceptable; N=neutral):

	Technical Approach / Mgmt.	Corp. Exper.	Past Perf.	Small Bus. Subcontr.	OVERALL RATING	TOTAL PRICE (millions)
Dorado	A	A	A	A	A	\$34.5
Offeror A	LA	A	A	A	A	\$35.4
Offeror B	A	A	A	A	A	\$44.1
Meeks	LA	LA ⁴	N ⁵	A	LA	\$11.7
Offeror C	LA	LA	N	LA	LA	\$15.2

SSB Report at 5.

The source selection authority (SSA) then reviewed both the TEB and SSB reports. The SSA concurred with the ratings by the SSB, and the selection of Dorado as the lowest-priced, technically acceptable offeror.⁶ Source Selection Decision at 4. In

⁴ As a small business that proposed to perform the contract itself, Meeks was rated acceptable under the small business factor, but less than acceptable under the corporate experience factor. If Meeks's rating of "less than acceptable" under the corporate experience evaluation factor were the sole basis for concluding that its proposal was unacceptable, it appears, from this record, that the Navy would be required to refer this issue to the Small Business Administration for a certificate of competency review. See *Clegg Indus., Inc.*, B-242204.3, Aug. 14, 1991, 91-2 CPD ¶ 145 at 2-3. We do not reach that conclusion here, as we find that Meeks was properly rated less than acceptable overall on the basis of its rating under the technical approach/ management factor.

⁵ Here, the SSB replaced the TEB's assessment of Meeks's past performance as less than acceptable with a rating of "neutral." SSB Report at 6. While the references contacted in the past performance inquiry had assessed Meeks's performance as either "good" or "excellent," the TEB had downgraded the firm's past performance because the evaluators felt that the reference contract work was not sufficiently relevant.

⁶ While Meeks's initial protest argued that its proposal also had been rejected on the basis of unacceptably low pricing, and the record confirms that the SSB and SSA referred to Meeks's price as "unrealistic and unreasonable," see Source Selection

(continued...)

accordance with the SSA's decision, the contracting officer awarded the contract to Dorado. The Navy notified Meeks of the award to Dorado and provided a debriefing at Meeks's request. This protest followed.

DISCUSSION

Meeks objects that its ratings under the technical approach/management factor and the corporate experience factor were unreasonable, and argues that many of the evaluated weaknesses were based on unstated evaluation criteria.⁷ Meeks argues that award should have been made to it, at its significantly lower price.

For example, Meeks contends that the criticisms that it lacked a plan for recruiting and retaining personnel were unjustified because its proposal included a "separate tabbed section" addressing that issue, and also indicated that Meeks's existing staff would fill the principal management positions under the contract. Meeks also argues that its comprehensive safety program document, which was included as an attachment to its proposal, explained the firm's policies for hiring truck drivers. Protester's Comments at 4, 8-12.⁸

(...continued)

Decision at 3, any alleged error in this regard did not result in competitive prejudice because, as discussed below, Meeks's proposal was reasonably evaluated as technically unacceptable.

⁷ Meeks also raised other grounds of protest, which we address here only in summary. For example, Meeks raised several challenges to the solicitation, or to how the procurement was conducted which, in order to be considered timely, had to be protested before submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2007). Meeks also raised challenges to the Navy's affirmative determination of Dorado's responsibility, which we did not consider because the protester's arguments did not raise the kind of issues we will review as part of a challenge to an affirmative determination of responsibility. See Bid Protest Regulations, 4 C.F.R. § 21.5(c). Finally, Meeks broadly challenged the technical competence of the evaluators, which our Office will not review absent a showing of fraud, conflict of interest, or actual bias--none of which Meeks has alleged. Telestar Corp., B 275855, Apr. 4, 1997, 97-1 CPD ¶ 150 at 5 n.3.

⁸ Meeks also argued in a supplemental protest that the Navy improperly downgraded the firm for not providing a company-wide recruiting and retention plan, and that the alleged requirement to submit such a plan was both unreasonable and an undisclosed evaluation factor. We think the record confirms that the Navy only sought and evaluated whether Meeks had a reasonable plan to recruit and retain the personnel that it was proposing for performance of this contract. Supplemental Legal Memorandum at 9.

In answer, the Navy contends that Meeks's proposal provided no substantive explanation of where and how it would recruit new employees, or of the techniques the firm would use to ensure retention of its existing staff. Legal Memorandum at 9. While the Navy acknowledged that Meeks's safety program materials did state some minimum qualifications for truck drivers, it concluded that the materials provided no information on how the firm planned to recruit and retain drivers meeting those qualifications. Id.

The Navy also points out that the so-called "separately tabbed section" of Meeks's proposal regarding recruitment and retention was less than half a printed page, which stated in its entirety:

[Meeks] is fortunate to have an incredible pool of management and skilled employees. Even so, we recognize that there will always be a need to be better stewards and ensure consistency in performance based contracts. We are committed to continuing to rise to that challenge.

[Meeks] must continue to recruit and retain high quality and skilled employees to maintain this project and its current customer base. Currently all senior management positions are filled and we have attracted experienced management from appropriate backgrounds to meet the needs [of] our Company and this project.

Furthermore, [Meeks] realizes it is crucial to recruit and retain employees and management who have high ethical standards and who have experience, acumen, judgment and other attributes that are recognizable by us in the refuse and disposal industry. To that end, [Meeks] recruitment policies are being tightened and staff recruitment will include appropriate background check at the highest levels of industry standard.

Meeks Proposal at 23.

In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate proposals. Rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations.

Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate, United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19, and a protester's mere disagreement with the evaluation is not sufficient to render it unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Where, as here, an offeror provides cursory, general assurances that it can perform the work in response to specific requirements in an RFP to provide detailed information, the agency may reasonably find that the proposal lacks required information and thus is

technically unacceptable. Worldwide Primates, Inc., B-294481, Oct. 12, 2004, 2004 CPD ¶ 206 at 4-5.

Here, in answer to the RFP's requirement that each offeror explain its plan to recruit and retain staff, Meeks provided only the brief, general statement quoted above, which expressed its intention to recruit and retain high-quality staff. And Meeks cannot reasonably claim that the limited information in its proposal addressing the qualifications required for truck drivers should be construed as a substantive plan for recruiting and retention for a project of this magnitude. We conclude that the Navy reasonably evaluated Meeks as unacceptable, based on the firm's failure to address this specific material requirement of the RFP.

The protest is denied.

Gary L. Kepplinger
General Counsel