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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Strategic e-Business Solutions, Inc.

File: B-310210

Date: November 8, 2007

Howard Folkes for the protester.

Jeffri Pierre, Esq., Department of Health and Human Services, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably concluded that protester had failed to demonstrate that it had a subcontracting agreement in place for a required area of expertise where purported subcontracting agreement did not describe the type of services to be furnished by the subcontractor or the price terms and there was no evidence that subcontractor's offer of services had been accepted by the protester.

2. Where agency conducted discussions that reasonably led protester into the area of its proposal requiring amplification, agency was not required to conduct additional discussions once it determined that proposal, as revised, remained informationally deficient.

DECISION

Strategic e-Business Solutions, Inc. (SeBS) protests the rejection of the proposal that it submitted in response to request for proposals (RFP) No. CMS-2007-8A-0006, issued by the Centers for Medicare and Medicaid Services, Department of Health and Human Services, for the development of materials to be used to train customer service representatives in responding to Medicare beneficiary inquiries. The protester takes issue with the evaluation of its proposal.

We deny the protest.

The RFP provided for an initial screening of proposals on a pass/fail basis to determine their compliance with a solicitation requirement pertaining to experience.¹ The proposals that passed the factor were then to be evaluated on the basis of multiple additional factors (technical understanding, management plan, optional tasks, personnel qualifications, corporate experience, past performance, and cost/price), while the proposals that failed the factor were to be excluded from further consideration. The experience factor provided as follows:

The prime contractor and/or its subcontractors proposing under this contract shall demonstrate that it has provided integrated training, content, and quality monitoring services in a multi-channel contact center servicing Medicare beneficiaries. The contractor shall have experience with the current CMS Next Generation Desktop (NGD) functionality and an understanding of the build process in order to provide actionable recommendations as they relate to the NGD or any of its integrated components.

Note: This requirement may be met with a combination of experience from the prime and subcontractor(s) and/or the prime may use experience across multiple legal entities that are owned under a single corporate umbrella. . . . Subcontracting agreements and the establishment of new legal entities must be final at the time of proposal submission.

RFP at 76. Offerors were instructed to demonstrate their compliance with the foregoing requirements by (1) providing a narrative summary explaining their compliance, (2) furnishing copies of “formal subcontracting teaming agreements” and documentation substantiating any new legal entities, and (3) citing specific examples demonstrating their compliance with the above requirements. Id. at 66-67.

SeBS submitted its proposal by the August 2, 2007 closing date. In its proposal, the protester represented that “SeBS consultants” (whom it did not further identify) had NGD experience. After reviewing SeBS’s proposal, the contracting officer advised the protester that it had not furnished sufficient information to achieve a rating of pass under the experience requirement and that it needed to clarify how its team satisfied the requirement. Of particular relevance to this protest, the contracting officer asked SeBS to clarify its team’s experience with NGD functionality and to identify the consultants that it would be using to meet the requirement for NGD experience. He also asked SeBS to clarify whether the consultants were being proposed as part of the SeBS team.

¹ The solicitation contemplated the award of a cost-plus-fixed-fee contract for a 3-month transition period, a 15-month base period, and four 1-year option periods.

SeBS responded to the agency's request for additional information by noting that it had "negotiated consulting support from" a company with NGD experience.² Protester's Aug. 16, 2007 Response to the Agency at 7. SeBS included with its response a copy of a letter addressed to SeBS by the company. The letter, termed a "contracting service agreement," stated that, upon award of a contract under the RFP to SeBS, the company "offered" to provide the protester with professional services in support of the contract "on an as requested basis after discussion and mutual agreement on a defined set of services to be delivered by [the company]." Id. at 1. The letter further provided that rates and fees would be negotiated after the contract had been awarded. The words "Accepted on behalf [of] Strategic e-Business Solutions, Inc." had been typed at the bottom of the letter, but no signature had been entered in the blank above the words.³

After reviewing SeBS's response, the contracting officer advised the protester that it had not furnished sufficient information to demonstrate that it had NGD experience, and, accordingly, that its proposal had failed the initial screening and would not be considered further. In a subsequently furnished debriefing, the contracting officer explained that it was not the knowledge and experience of SeBS's named proposed consultant that the agency questioned, but rather, SeBS's failure to demonstrate that it had an "active subcontracting agreement" with the company. Debriefing Letter at 3.

SeBS protested to our Office on September 7, arguing that the agency had applied an unstated evaluation criterion in rejecting its proposal for failing to furnish a fully-negotiated subcontracting agreement. SeBS maintains that all that the solicitation required was a written agreement to enter into a subcontract (as opposed to a partnership or joint venture) with its proposed consultant, not a "fully negotiated subcontract with prices." Comments at 4.

Contrary to the protester's position, the RFP required more than written evidence of an agreement to enter into a subcontract; the RFP language quoted above clearly provided that any subcontracting agreements on which an offeror relied to establish the required experience had to be "final" at the time of proposal submission. The letter from the consultant provided by SeBS failed to furnish any detail whatsoever

² The protester named the company in its response, but we have not included this information in our decision because the protester has identified it as confidential.

³ SeBS furnished a copy of the subcontractor's letter to our Office as an attachment to its protest; this version of the letter does contain a signature in the blank over the words "Accepted on behalf of Strategic e-Business Solutions, Inc." Since the signature did not appear on the version of the letter furnished to the agency, we can only conclude that the signature was entered after the protester had furnished the agency with a copy of the letter.

regarding the services to be delivered, stating only that the consultant would provide “professional services” to SeBS in support of the contract “after discussion and mutual agreement on a defined set of services to be delivered” by the consultant. Similarly, the letter left open the price terms of any agreement, stating that the consultant’s “rates and fees will be negotiated once the contract has been awarded.” Further, as noted above, the version of the letter furnished by the protester to the agency did not contain a signature by an SeBS representative; thus, there was no evidence that the two parties had in fact entered into an agreement. Given the general nature of the letter and its lack of specificity regarding basic terms, we think that the agency reasonably concluded that SeBS failed to demonstrate that it had a final subcontracting agreement in place to establish the required NGD experience that SeBS itself was missing, as required by the RFP.

Next, the protester argues that the agency failed to conduct meaningful discussions with it by failing to advise it that the documentation that it had submitted was insufficient to establish that it had entered into a subcontracting agreement covering NGD expertise. The protester is in essence arguing that after notifying it that it had not adequately addressed the issue of NGD experience in its initial proposal and giving it the opportunity to submit additional information, the agency had an obligation to notify it and permit it to submit still more information once the agency determined that the additional information submitted by the protester was still insufficient.

We disagree. While it is true that when an agency engages in discussions with an offeror, those discussions must be meaningful, meaning that they must lead the offeror into the areas of its proposal requiring correction or amplification, the requirement for meaningful discussions does not obligate an agency to continue to conduct successive rounds of discussions until all proposal defects have been corrected. Metson Marine Servs., Inc., B-299705, July 20, 2007, 2007 CPD ¶ 159 at __; Metro Mach. Corp., B-295744, B-299744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 19. Here, the questions posed by the agency were clearly sufficient to place the protester on notice that it needed to furnish further information regarding the consultant(s) that it would be using to meet the requirement for NGD experience and their status vis-à-vis the SeBS team. Once the agency had determined that the additional information furnished by the protester in response to its questions was still insufficient to demonstrate that SeBS had entered into a subcontracting agreement for NGD expertise, the agency was under no obligation to give the protester another opportunity to cure the informational deficiency. See OMV Med., Inc., B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7.

The protest is denied.

Gary L. Kepplinger
General Counsel