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Decision

Matter of: Group GPS Multimedia

File: B-310716

Date: January 22, 2008

Ryan P. Angle, Esq., for the protester.

Capt. Megan E. Yoss, Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Awardee's proposal submitted in response to a solicitation for audio-visual products and services was reasonably evaluated, where the agency reasonably considered the awardee's proposed approach consistent with the evaluation factors set forth in the solicitation.
 2. Awardee's proposal that included a particular labor category to perform service contract work was not legally objectionable where the proposal, submitted in response to a solicitation that provided for the award of a fixed-price contract, did not violate any solicitation provisions; contention that the use of the proposed labor category would violate the Service Contract Act will not be considered by GAO because it is a matter for consideration by the Department of Labor and whether contract requirements are met during the performance of the contract is a matter of contract administration.
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DECISION

Group GPS Multimedia protests the award of a contract to K-MAR Industries, Inc., under request for proposals (RFP) No. W9124N-07-R-0004, issued by the Department of the Army, for audio-visual products and services. The protester argues that the agency's evaluation and selection of K-MAR's proposal for award were unreasonable.

We deny the protest.

The RFP, issued as a 100-percent set-aside for small businesses, provided for the award of a fixed-price contract for a base period of 11-months with four 1-year options. The contractor will be required to "provide all personnel, management, supervision, equipment, tools, supplies, materials, transportation, and any other

items necessary” (with the exception of certain government-furnished property and services) to furnish the audio-visual products and services in accordance with the solicitation’s performance work statement (PWS). RFP at 29. The tasks listed in the solicitation to be performed by the contractor include, for example, still photography products and services, video products and services, audio products and services, as well as media duplication and technical support. Id. The RFP also incorporated by reference Federal Acquisition Regulation (FAR) § 52.222-41, “Service Contract Act [SCA] of 1965,” and a wage determination applicable to the contract that established the minimum applicable SCA wages and benefits. RFP at 57-67, 121.

The solicitation informed offerors that award would be made to the offeror submitting the proposal determined to represent the best value to the government based upon the evaluation factors of technical capability, past performance, and price. The technical capability factor was comprised of three equally important evaluation subfactors: quality control plan, organizational structure/staffing, and management plan. The evaluation results under the technical capability factor were considered significantly more important than the evaluation results under the past performance factor, and the non-price factors combined were considered equal in importance to price, in determining which proposal represented the best value to the government. RFP amend. 4, at 44-45.

The agency received proposals from seven offerors, including Group GPS and K-MAR. The record reflects that the two members of the technical evaluation team were unable to reach a consensus with regard to the overall rating to be assigned to the proposals of Group GPS and K-MAR under the technical capability factor, and given this, each evaluator prepared a memorandum detailing the bases for their respective determinations as well as their summary evaluation results. Group GPS’s proposal was evaluated as “exceptional” under the technical capability factor by one evaluator and “marginal” by the other evaluator, while K-MAR’s proposal was evaluated as “exceptional” under the technical capability factor by one evaluator and “acceptable” by the other evaluator.¹ Group GPS’s past performance was rated “acceptable,” while K-MAR’s past performance was rated “exceptional.” Group GPS’s proposed price was \$3,891,186 and K-MAR’s proposed price was \$3,391,946. Agency Report (AR), Tab 33, Source Selection Decision, at 4-5.

The source selection authority (SSA) reviewed the proposals of Group GPS and K-MAR, as well as the evaluation results, and assigned ratings under the technical capability factor of “acceptable” to Group GPS’s proposal and “exceptional” to K-MAR’s proposal. Id. at 7. With regard to K-MAR’s proposal, the SSA found that while K-MAR’s proposed staffing mix “was a concern” to the evaluator that had rated

¹ The RFP provided that proposals would be evaluated under the technical capability factor and each of its subfactors as either “exceptional,” “acceptable,” “marginal,” or “unsatisfactory.” RFP at 44-45.

the proposal as “acceptable” under the technical capability factor, K-MAR had “explained in great detail how and why they chose their staffing.” Id. at 8. The SSA added that in his view K-MAR’s staffing, which provided that personnel categorized by K-MAR as [DELETED] was “a strength to their proposal,” given that [DELETED]. Id. The SSA noted here that “K-MAR is successfully performing . . . ten other [Department of Defense] audio visual contracts using the same staffing techniques,” and that K-MAR’s proposal provided “an in-depth training plan; an exceptional phase-in plan; and an exceptional management plan.” Id. The SSA selected K-MAR’s higher-rated, lower-priced proposal for award, and after requesting and receiving a debriefing, Group GPS filed this protest.

Group GPS argues that the agency’s evaluation of K-MAR’s proposal as exceptional under the technical capability factor was unreasonable. Specifically, Group GPS contends that K-MAR’s proposal should have been downgraded under the staffing element of the organizational structure/staffing plan subfactor to the technical capability factor, because, in the protester’s view, K-MAR’s staffing plan, which proposes [DELETED] to perform a number of tasks, is inadequate.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency’s judgment was reasonable and in accord with the evaluation factors set forth in the RFP. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. Hanford Env’tl. Health Found., B-292858.2; B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4.

The record reflects that the agency was fully aware of K-MAR’s proposed use of [DELETED] to perform a number of the requirements set forth in the RFP. Indeed, as noted, this aspect of K-MAR’s proposed approach was considered by the SSA to be a strength of K-MAR’s proposal. As noted by the SSA, K-MAR’s proposal details K-MAR’s training program, and describes the benefits to the agency of having [DELETED] capable of performing [DELETED]. AR, Tab 33, Source Selection Decision, at 7-8; Tab 21, K-MAR’s Proposal, at 21-30. Although the protester clearly disagrees, our review of the record leads us to conclude that the agency’s evaluation of K-MAR’s proposed staffing was sufficient, and we find no basis to question the agency’s evaluation of K-MAR’s proposal as “exceptional” under the staffing element of the organizational structure/staffing plan subfactor to the technical capability factor.²

The protester also argues that K-MAR’s proposed [DELETED] labor category is inconsistent with the terms of the SCA, and that by using the wage rates applicable

² Contrary to the protester’s argument, K-MAR’s proposal expressly addresses the staffing of the service counter requirements. RFP at 30; AR, Tab 21, K-MAR’s Proposal, at 21-30.

to [DELETED] in calculating its proposal, K-MAR received “a substantial and unfair advantage” that allowed K-MAR “to submit a much less expensive bid.” Protester’s Comments at 5-6.

On a fixed-price contract, as here, under which the awardee is required to pay the actual SCA wages and benefits out of whatever price it offers, and where the proposal contains no indication that the company will not meet its statutory obligations in this regard, labor rates or benefits that are less than the SCA-required rates or benefits may constitute a below-cost offer but one which is legally unobjectionable. Biospherics, Inc., B-285065, July 13, 2000, 2000 CPD ¶ 118 at 12. That is, regardless of what wage rates K-MAR used in calculating its proposed price, it will still be required to compensate its employees at the appropriate prescribed SCA wage rates. Free State Reporting Inc., B-259650, Apr. 4, 1995, 95-1 CPD ¶ 199 at 7. Further, the determination of prevailing wages and fringe benefits, and the issuance of appropriate wage determinations under the SCA, are matters for the Department of Labor (DOL). Concerns with regard to establishing proper wage rate determinations or the application of the statutory requirements should be raised with the Wage and Hour Division in DOL, the agency that is statutorily charged with the implementation of the Act. See 41 U.S.C. §§ 353(a); 40 U.S.C. § 276a; SAGE Sys. Techs., LLC, B-310155, Nov. 29, 2007, 2007 CPD ¶ 219 at 3. Thus, to the extent the protester’s contention is that K-MAR may not properly categorize its employees under the SCA or compensate some of its employees at the required SCA wage rate, it is not a matter for our consideration, since the responsibility for the administration and enforcement of the SCA is vested in DOL, not our Office, and whether contract requirements are met is a matter of contract administration, which is the function of the contracting agency. SAGE Sys. Techs., LLC, *supra*; Free State Reporting Inc., *supra*, at 7 n.7.

We deny the protest.

Gary L. Kepplinger
General Counsel