Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dual, Inc.

File: B-279295

Date: June 1, 1998

Kevin M. Kordziel, Esq., Jenner & Block, for the protester.
Kacie A. Haberly, Esq., General Services Administration, for the agency.
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DIGEST

Agency reasonably evaluated the protester's proposal under the solicitation's relevant corporate experience evaluation factor as technically unacceptable, where the proposal did not evidence sufficient experience in a required area, and the references listed in the protester's proposal and contacted by the agency did not indicate that the protester had the requisite experience.

DECISION

Dual, Inc. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. FCXA-FA-970003-N, issued by the General Services Administration (GSA), for non-mandatory, multiple award federal supply schedule (FSS) contracts encompassing management, organizational and business improvement services (MOBIS).

We deny the protest.

Non-mandatory, multiple award FSS contracts are indefinite-delivery contracts under which commercial firms may provide government agencies with commonly used goods and services for given periods of time. Government ordering activities can order goods or services under simplified procedures from the contracts to meet their requirements. In this case, vendors that responded to this RFP and are awarded a contract by GSA will be listed on the FSS, and an agency needing MOBIS may, after making a best value determination, place a task or delivery order, based on a fixed price, with the selected vendor.

The RFP, issued on April 4, 1997, requested proposals for a contract period from the date of award through September 30, 2002, with one 5-year option period. The MOBIS contractors are to provide a full range of services and products for consulting, facilitation, surveys and training, which will permit the agencies to begin

or continue management, organizational and business improvement efforts with regard to performance, quality, timeliness and efficiency throughout their organizations. RFP §§ C.2.1.3, C.2.1.5. The services are to facilitate agencies' responses to dynamic, evolutionary influences and mandates, and are intended to enable the agencies to continuously improve mission performance. RFP § C.2.1.5. Examples of the MOBIS contemplated under the FSS contracts include quality management; business process reengineering; strategic and business planning; benchmarking; strategic sourcing; activity-based costing; financial management analysis related to an improvement effort; statistical process control; surveys; individual and organizational assessments and evaluations; process improvements; process modeling and simulation; performance measurement; organizational design; change management; development of leadership/management skills; and training in improving customer service and satisfaction. Id. The RFP requested prices for five types of MOBIS-related items: (1) consultation services, (2) facilitation services, (3) survey services, (4) training services, and (5) support products. RFP § C.2.1.6

The RFP provided for multiple awards to responsible offerors whose technical proposals are determined to be acceptable and whose prices are considered fair and reasonable. RFP § E.5. Section E.5.1 of the RFP listed the following technical evaluation factors: (1) Understanding of Requirements, (2) Professional Staff, (3) Relevant Corporate Experience, and (4) Past Performance. The RFP specified that the first three factors were to be evaluated on "a 'go or no-go' basis," RFP § E.5, and that for each of these evaluation factor proposals "must satisfy the requirement completely or they will be eliminated from further consideration." RFP § E.5.1.

The RFP included detailed instructions for the preparation of proposals, and advised that GSA "may evaluate offers and award a contract without discussions with offerors." RFP § B.2. The RFP added that because of this "the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint." Id.

Dual's proposal was rated as "go," or technically acceptable, under the understanding of requirements and professional staff evaluation factors, and as "no go," or technically unacceptable, under the relevant corporate experience evaluation factor. With regard to the relevant corporate experience evaluation factor, the RFP specified that in order for a proposal to be evaluated as technically acceptable it must include "[o]fferor-provided narratives which demonstrate that the offeror has performed at least three successful MOBIS-related projects within the last two years." Here, the agency determined that one of the three projects listed by Dual in its proposal as evidencing its experience in providing MOBIS, which described Dual's performance of a contract supporting a cockpit resource management (CRM) program for the Air National Guard and the Air Force Reserve, was "not sufficiently MOBIS-related as defined in the [RFP's] statement of work."

Dual protests that the agency's evaluation of its proposal under the relevant corporate experience factor was unreasonable. The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

The RFP, at § E.3.C, informed offerors that the section of their proposals responding to the relevant corporate experience evaluation factor

> must include . . . [s]ummary descriptions of MOBIS efforts undertaken by the offeror and, separately, by each proposed subcontractor, within the last two years, in federal, state or local government agencies that are relevant to MOBIS. . . . Descriptions must include the following:
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> 1. A description of assistance provided to agency or firm. Show objectives, methodologies, and results. Indicate the nature of the organization for which the services were provided, such as: legal, military, medical, finance and accounting, postal services, personnel management, specialized manufacturing, education and training, general support services, procurement, etc.
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> 2. Identify agency or firm, including names and telephone numbers of the individuals in the agency's or firm's program office, as well as line managers for whom work was performed. This information may be used to verify information provided in the summaries.

The RFP required that each of the three descriptions of the offeror's MOBIS efforts be no more than two typed, single-spaced pages long, and emphasized that the descriptions were to "concisely identify the objectives, methodologies and results obtained throughout the firm's MOBIS efforts." Id. (emphasis deleted).

The agency found in reviewing Dual's description of its role in the CRM program that, while the description referred to tasks that appeared to be MOBIS related, Videotape Transcript (VT) at 10:24:50, the references were conclusory in nature, in that they failed to describe specific methodologies employed by Dual to show what

was being changed or improved in the organization. VT at 11:09:20.[1] The agency also found that the only references to MOBIS-related tasks in Dual's description of the CRM program were in two sentences of the total description and that MOBIS-related work seemed to be a relatively minor part of the program. VT at 10:40:58. The agency concluded, based upon its review of Dual's proposal, that the CRM program, and Dual's role in the program, primarily involved training regarding human interaction within an aircraft cockpit and its effect on flight safety, rather than, for example, strategic planning or performance measurement on an organizational level, which would be MOBIS related. VT at 9:37:33. Because of this, the agency found that it was, at best, unclear from Dual's proposal whether Dual had performed sufficient MOBIS-related work with regard to the CRM program for its proposal to be determined technically acceptable, and decided to contact the individuals listed in Dual's proposal for the CRM program. VT at 12:08:39.

The agency contacted each of the three individuals listed by Dual in this section of its proposal, and was informed that, consistent with GSA's understanding, the CRM program primarily involved classroom training regarding, for example, the coordination of the individuals in an airplane or flight of airplanes and the core concepts that affect airplane safety, such as stress and fatigue. VT at 12:16:44, 12:18:45, 14:28:19, 14:35:33, 14:36:55, 14:37:12. The agency explains that, based upon its determination that Dual's experience with the CRM program, as described in its proposal, was not sufficiently MOBIS related, and its conversations with the references listed in Dual's proposal, which in GSA's view verified the accuracy of its initial determination, it concluded that Dual's proposal did not evidence that Dual had "performed at least three successful MOBIS-related projects within the last two years" as required by RFP § E.5.1, and was thus technically unacceptable.

Dual contends that the agency's determination that Dual's proposal is technically unacceptable was primarily based upon the agency's misunderstanding of Dual's role in the CRM program. Specifically, Dual explains that it used a five-step approach in implementing the training system for the CRM program, VT at 11:19:00, and contends that the first two steps of this approach constitute MOBIS. VT at 11:20:59. In its comments on the agency report, Dual provides a lengthy explanation regarding the services it performed during these first two steps, as well as the relevant delivery orders, which according to Dual verify that the work it performed during these first two steps was MOBIS related. Dual also explains that the references listed in its proposal were unable "to detail the exact nature or significance of Dual's MOBIS related work" because the references' participation in the CRM program commenced after Dual had completed the first two steps of its five-step approach to the CRM program.

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[1]Citations to the videotape transcript refer to the transcript of the hearing conducted by our Office in connection with this protest.

In our view, the agency reasonably determined that Dual's proposal was technically unacceptable. We agree with the agency that the majority of Dual's narrative concerning the CRM program discusses activities and characteristics of the program which do not appear to be MOBIS related. This impression, as indicated above, was confirmed by the references listed in Dual's proposal. Moreover, as noted by the agency, the parts of the narrative which mention MOBIS-related work do not, as requested by the RFP, show the objectives and methodologies used by Dual in assisting the agencies with the CRM program in any detail at all, VT at 11:32:44, but instead describe Dual's role in a conclusory fashion. VT at 11:32:44.

Dual's explanation that it used a five-step approach in implementing the training system for the CRM program and its detailed description of the services performed during these first two steps appeared for the first time in its comments on the agency report. Since an agency's evaluation is dependent upon the information furnished in a proposal, it is the offeror's burden to submit an adequately written proposal for the agency to evaluate, especially where, as here, the offeror is specifically on notice that the agency intends to make award based on initial proposals without discussions. Infotec Dev., Inc., B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52 at 6. In light of Dual's failure to fulfill its obligation in this regard, we see no basis to find this aspect of the agency's evaluation unreasonable.

Dual complains that the agency failed to ask "probing questions to elicit information relevant to the MOBIS-related aspects of the CRM projects" when it spoke with the references listed by Dual for the CRM program. Post-Hearing Comments at 7. The protester adds that the agency should have contacted an individual who was not identified anywhere in Dual's proposal, but was mentioned by the references during their conversations with the agency. Dual argues that, had this individual been contacted, he would have been able to explain that certain of the work performed by Dual for the CRM program was MOBIS related.

There is no duty imposed upon an agency to ask questions of references in a particular manner, or to seek out individuals who were not listed in the relevant offeror's proposal, but were mentioned by the references contacted. See Basic Tech., Inc., B-214489, July 13, 1984, 84-2 CPD ¶ 45 at 7. In reviewing the manner and conduct of an agency in contacting, or choosing not to contact, the references listed by offerors in their proposals, we look to see if the agency proceeded in a reasonable and prudent manner. International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5.

As indicated above, the agency contacted all three references listed by Dual in the section of its proposal addressing its role in the CRM program. Further, when the agency tried to contact one of the references listed by Dual and was told that the individual listed was no longer with the CRM program, and was referred to another individual, the agency contacted that individual. VT at 1:39:59. The agency states that in questioning the references listed by offerors, including those listed by Dual,

it simply asked the references what the relevant offeror's role was in the contract identified. VT at 10:26:34. The agency explains that it chose not to ask the references more specific questions because it was concerned that specific questions would "prompt" certain answers. VT at 1:45:56. We simply cannot see how the agency, which contacted each of the references listed by Dual in its proposal and asked the references what role Dual had in the CRM program, acted unreasonably.[2]

Dual, a small disadvantaged business concern, argues for the first time in its comments on the hearing held in connection with this protest that the agency's rejection of Dual's proposal as technically unacceptable under the relevant corporate experience evaluation factor violated the Small Business Act, 15 U.S.C. § 637(b)(7)(A) (1994). This protest contention is untimely and will not be considered.

Our Bid Protest Regulations require that protests not based upon solicitation improprieties be filed not later than 10 days after the basis of protest is known, or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1998). Because Dual was aware at the time it filed its initial protest with our Office that it was a small disadvantaged business and that its proposal had been rejected as technically unacceptable under the relevant corporate experience evaluation factor, its protest that this rejection of its proposal violated the Small Business Act is untimely. Id.

Dual, while conceding that it did not raise the "legal argument" that the agency's rejection of its proposal as technically unacceptable violates the Small Business Act until it filed its comments on the hearing, nevertheless contends that this argument falls within Dual's "broad challenge to GSA's technical evaluation" of Dual's proposal.

The timeliness of specific bases of protest raised after the filing of a timely protest depends upon the relationship the later-raised bases bear to the initial protest. Vinnell Corp., B-270793, B-270793.2, Apr. 24, 1996, 96-1 CPD ¶ 271 at 7. Where the later-raised bases present new and independent grounds for protest, they must independently satisfy our timeliness requirements. Conversely, where the later-

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[2]Because, as explained by Dual and evidenced by the testimony of two of the references, the references were not familiar with Dual's claimed performance of MOBIS-related work in the initial phases of the CRM program, it is unclear how Dual was prejudiced by the agency's determination not to ask specific questions of the references. That is, the record reflects that because of their lack of familiarity with Dual's claimed performance of MOBIS-related work in the initial phases of the CRM program, the references would have been unable to substantively answer "probing questions to elicit information relevant to the MOBIS-related aspects of the CRM projects."

raised bases merely provide additional support for an earlier, timely raised protest basis, we will consider the later-raised arguments. Id.

Here, Dual's argument regarding the Small Business Act, first raised in Dual's comments on the hearing, constitutes a new and independent bases of protest, rather than additional supporting material for its earlier protest contentions. Specifically, Dual's later-raised argument that the agency's actions violated the Small Business Act provides no support for, and is separate and distinct from, its initial protest contention that the agency's determination that Dual's proposal was technically unacceptable under the RFP's relevant corporate experience evaluation factor was unreasonable.

The protest is denied.

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of the United States