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Decision

Matter of: OMNIPLEX World Services Corporation

File: B-282630.2

Date: September 22, 1999

Katherine S. Nucci, Esq., and Timothy Sullivan, Esq., Adduci, Mastriani & Schaumberg, for the protester.

Scott Godes, Esq., Sheila C. Stark, Esq., and David B. Dempsey, Esq., Piper & Marbury, for Securiguard, Inc., an intervenor.

R. David Gale, Esq., Kathy B. Cowley, Esq., and Marleen J. Phillips, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Offeror has the obligation to submit an adequately written proposal, and where proposal was at best ambiguous regarding offeror's understanding of and compliance with solicitation's prohibition against using a uniformed security guard as project manager, determination that protester's proposal was unacceptable without discussions was reasonable and consistent with solicitation.
 2. Where, even if General Accounting Office sustained protest against evaluation of awardee's proposal, another offeror whose proposal the agency rated more highly and who proposed a lower price would be in line for award, protester is not an interested party to raise issues concerning evaluation of the awardee.
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DECISION

OMNIPLEX World Services Corporation protests the award of a contract to Securiguard, Inc. under request for proposals (RFP) No. N00600-98-R-1489, issued by the Fleet and Industrial Supply Center (FISC), Department of the Navy, for armed security guard services. OMNIPLEX asserts that the evaluation of its proposal was unreasonable or inconsistent with the criteria set forth in the RFP and protests the agency's decision to make an award based on initial offers.

We deny the protest.

BACKGROUND

On May 4, 1998, the Navy issued the RFP for services at National Archives and Records Administration (NARA) buildings in Washington, D.C. (Archives I), and Adelphi, Maryland (Archives II), for a 1-year base period with four 12-month option periods.¹ The RFP, paragraph M.3(b), Contract Award-Best Value, provided for an award to the offeror whose proposal was “most advantageous to the Government,” considering price and other factors; these factors included three management factors, of which M-2 (personnel) was most significant and M-1 (management plan) was second in importance. The agency would also consider past performance, technical understanding and approach (factor T-1) and quality control (factor M-3), in that order of importance.

The RFP also listed several subfactors and elements of those subfactors. Factor M-2 contained three equally weighted subfactors; the first two subfactors, key personnel (M-2.1) and staffing and recruiting (M-2.2) consisted of three equally weighted elements. The third subfactor, additional security services (M-2.3), consisted of two equally weighted elements. Factor M-1 contained five subfactors, M-1.1 to M-1.5, in descending order of importance; one of these subfactors, M-1.1 (organization and management) contained six elements, M-1.1.1 to M-1.1.6, in descending order of importance. Subfactors M-1.2 through M-1.5--corporate resources, training and certification, subcontractor management, and transition--contained no elements.

The schedule, at the second page of the solicitation, advised offerors that a project manager was “essential” to performance, and the RFP contained a separate line item for project management. RFP at B-2, B-4. Section C of the RFP contained the statement of work (SOW), which addressed project management in the third section, RFP ¶ C.3, Management and Administration, after the overview of services (RFP ¶ C.1) and the general requirements (RFP ¶ C.2). The RFP advised offerors as follows:

CONTRACT MANAGEMENT AND SUPERVISION IS CONSIDERED CRITICAL TO THE PERFORMANCE OF THIS CONTRACT. Failure on the part of the Contractor to furnish, at all times, a competent and knowledgeable project manager, and such supervision as required herein, may render the Contractor subject to default.

RFP ¶ C.3.a.

¹By subsequent amendment, the agency advised offerors that the contract type would be “Indefinite Delivery Indefinite Quantity, Labor hour, and Firm-Fixed-Price contract.” RFP amend. No. 6.

Paragraph C.3b required a contractor to assign “another individual of equal or greater qualifications” when the project manager was unavailable for any reason. Paragraph C.3.2 of the RFP set forth the duties of the project manager, who would be “the single point of contact through which all Contractor/Government communications, work, and technical direction shall flow” and prohibited a contractor from appointing any of the uniformed security guards to perform the duties of the project manager.

Paragraph L.8 of the RFP provided instructions for proposal preparation; in pertinent part, ¶ L.8.2(c) of the RFP directed offerors to submit completed past performance questionnaires (Attachment 17, section J of the RFP) with their proposals, for the evaluation of past performance. Paragraph L.9 of the RFP provided for an oral presentation by “[o]fferors in the competitive range.”

As noted above, RFP ¶ M.3 provided for an award on the basis of best value. The clause is a FISC version of the Federal Acquisition Regulation (FAR) clause providing for award without discussions, but here contained a typographical error, as follows (emphasis supplied):

The Government intends to evaluate proposals and award a contract with discussions with offerors. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. Therefore, each initial offer should contain the offeror’s best terms from a cost or price and technical standpoint.²

The clause provided for ratings of “outstanding,” “better,” “acceptable,” “marginal,” or “unacceptable,” and warned, “A finding of Unacceptable in one technical factor may result in the entire technical proposal being found to be unacceptable.” RFP at M-7. Page M-5 of the RFP defined “marginal” as a proposal with deficiencies but which, given the opportunity for discussions, had a reasonable chance of becoming at least “acceptable.”

²The standard version of FAR § 52.215-1(f)(4), where an agency intends award without discussions, is as follows:

The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary.

The Navy received 12 proposals by the initial due date of July 16. During the evaluation of proposals, the agency discovered the typographical error in paragraph M.3; on February 11, 1999, it issued amendment No. 5 to the RFP, advising offerors that it considered this language ambiguous and substituting “without” for “with.” The amendment also deleted that portion of the RFP that dealt with oral presentations, advising offerors that the Navy would evaluate offerors based on their written proposals alone. RFP amend. No. 5 at 2.

A technical evaluation panel (TEP) reviewed the proposals. That panel assigned the protester’s proposal an “unacceptable” rating for the two most significant evaluation factors, M-2 (personnel) and M-1 (management plan). Evaluators concluded that OMNIPLEX had proposed [deleted]. On this basis, they rated the proposal as [deleted] for subfactors M-2.1 and M-1.1 and for factors M-2 and M-1. The agency’s Business Clearance Memorandum (BCM), pages 24-25, described the use of [deleted] as back-up to the project manager as the “major flaw” in the proposal under factors M-1 and M-2, although OMNIPLEX also received [deleted] ratings for element M-2.2.1, element M-2.2.3, and subfactor M-2.2. Evaluators rated the proposal as “unacceptable” overall. Technical Evaluation Summary Report for OMNIPLEX at 1.

The TEP found three proposals--from [deleted] and Securiguard, Inc.--“acceptable” overall; the [deleted]. Although the [deleted] proposal received a [deleted] rating under factor M-1, the source selection evaluation team determined that the superiority of the proposal did not merit the additional price and recommended selection of the Securiguard proposal--the lowest-priced of the [deleted] acceptable proposals--as the best value. The Source Selection Authority accepted this recommendation, and a Contract Review Board approved the selection of Securiguard. Source Selection Plan at 3; BCM at 2; Letter from FISC to OMNIPLEX proposal manager (Apr. 9, 1999); Contracting Officer’s Statement at 7-8. Accordingly, the agency notified offerors that it had selected Securiguard for award, and this protest followed.

EVALUATION ISSUES

Omniplex contends that the Navy’s evaluation of its proposal was unreasonable and inconsistent with the RFP requirements. The protester contends that it was not offering [deleted] as an alternate project manager. Rather, the protester explains, the proposal offered the [deleted] serve at Archives I because the [deleted] would be at Archives II. The protester contends that, if the agency had held discussions and allowed oral presentations, it could have clarified its intentions. OMNIPLEX also contends that since its proposal received no rating for any element or subfactor below “marginal,” it was unreasonable to rate the proposal as “unacceptable” overall.

Our Office examines an agency’s evaluation of technical proposals for reasonableness and consistency with the solicitation. Pacifica Servs., Inc., B-280921, Dec. 7, 1998, 98-2 CPD ¶ 137 at 3. Since the agency’s evaluation must rely upon the information in the proposal, the offeror has the obligation to submit an adequately

written proposal, and its failure to fulfill that obligation does not render the evaluation unreasonable. Id. Considering the solicitation's emphasis on the importance of the project manager position and the uncertainty of OMNIPLEX's proposal concerning [deleted] as alternate project manager we cannot conclude that the evaluation here was either unreasonable or inconsistent with the solicitation.

Paragraph L.8.1 of the RFP, advising offerors what information to provide in their proposals, also provided evaluation standards for the stated evaluation factors, subfactors, and elements. For element M-1.1.1 (management approach), it required offerors to provide evidence of their understanding of the SOW and required them to tell how many supervisors or managers that would be assigned to the contract "to provide timely and effective . . . supervisory control and response." For subfactor M-2.1, offerors had to describe the number of key personnel assigned to the contract (element M-2.1.1, managers and supervisors) and demonstrate their approach to providing backup for key personnel during absences (element M-2.1.2, key personnel back-up). They had to demonstrate that all proposed key personnel met or exceeded the SOW (element M-2.1.3, key personnel qualifications). Under the RFP, an offeror was thus required to demonstrate its understanding of the SOW's emphasis on the project manager position, including its plans for providing a back-up project manager when the project manager was absent.

The protester's proposal was at best ambiguous in this regard, [deleted]. Table of Contents at 4; Management Plan at 4, 20. Further, page 5 of the management plan expressly states that [deleted]; the SOW, page C-12 of the RFP, states that the project manager "shall provide the single point of contact." As noted above, the RFP contained a clear warning against proposing a uniformed security officer to serve in the project manager position. The schedule and SOW emphasized the project manager's role, terming it "essential" and "critical"; it expressly forbade the use of a uniformed security officer as project manager. The agency's apparent concern, under the RFP, that an offeror might not understand or might try to evade RFP restrictions on the appointment of unqualified personnel to the project manager position, and its evaluation of the protester's proposal in this regard, were both reasonable and consistent with the solicitation.

Further, even though evaluators assigned a rating of "marginal" to element M-1.1.1, as well as elements M-2.1.1 and M-2.1.2, the RFP provided for applying the "marginal" rating to proposals that required discussions to become "acceptable." RFP at M-5. The agency here advised offerors of its intention not to hold discussions, removing any ambiguity in the matter through amendment No. 5. There generally is no obligation for an agency to hold discussions where the RFP advises offerors that the agency intends to make award without discussions. Rohmann Servs., Inc., B-280154.2, Nov. 16, 1998, 98-2 CPD ¶ 134 at 8. Given, therefore, that the agency did not intend to hold discussions, its treatment of "marginal" ratings as "unacceptable" ratings was consistent with the definition of "marginal." Further, the RFP warned that the agency could find a proposal "unacceptable" overall if it received an "unacceptable" rating for any factor. The agency's conclusion that the proposal was

“unacceptable” because it was “marginal” for certain elements was therefore consistent with the RFP.

Subsequent to receiving the agency report filed in response to its protest, OMNIPLEX filed a supplemental protest against the evaluation of Securiguards proposal. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 and our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1999), only an "interested party" may protest a federal procurement. Here, the agency argued, even if our Office were to sustain a protest against the Navy's evaluation of Securiguards proposal, there are [deleted] other technically acceptable, lower-priced proposals in line for award-- [deleted] and the protester is therefore not an interested party for the purpose of challenging the evaluation of Securiguards proposal. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281388 et al., Feb. 3, 1999, 99-1 CPD ¶ 53 at 10. Protester's counsel was provided an opportunity to review copies of the [deleted] proposals so that it could defend against the agency's contention that it was not an interested party to challenge Securiguards evaluation.³ We conclude that [deleted] would be in line for award if the protest were sustained and that, therefore, OMNIPLEX is not an interested party to challenge the evaluation of the awardee's proposal.

OMNIPLEX contends that [deleted] proposed, [deleted] that RFP ¶ C.5.2.3.b required for shift supervisors, and, as candidates for the security guard positions, individuals who lacked the 3 years experience that RFP ¶ C.5.2.3.c required for those positions. RFP at C-21. The protester notes that it received a [deleted] rating for element M-2.2.1, staffing, because [deleted] to rate [deleted] as [deleted] for staffing. The record shows that, in fact, [deleted]. RFP ¶ C.5.2.3.b specifically allows consideration of experience in military law enforcement.

Regarding the security guard positions, [deleted]. Of critical importance, the RFP did not identify the security guard positions as key positions; the offeror was thus not required to identify the candidates it would ultimately hire. Under these

³OMNIPLEX raised several issues regarding the Securiguards proposal, among them the failure of the awardee to provide a phase-out plan in accordance with the RFP instructions. The agency's response to this issue is that the failure to furnish such a plan would not prevent the proposal from being acceptable, even if evaluators had rated the proposal "marginal" for element M-1.5, transition. Lacking any indication in the record that the Navy considered this issue during its evaluation, we accord little weight to such a response. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. However, in view of our conclusion that at least [deleted] offeror, [deleted], submitted an acceptable offer at a lower price, we need not resolve this issue. We note, however, that subfactor M-1.5, transition, was the least important of five subfactors under factor M-1, and therefore, as the agency suggests, a marginal rating there may not have dictated an unacceptable rating for factor M-1 overall.

circumstances, we cannot conclude that the agency unreasonably evaluated [deleted] in this regard, as understanding the requirement.

The protester also asserts that [deleted]. RFP at C-15 to C-18. Except for annual firearms training, RFP ¶ 4.3, and refresher training, RFP ¶ 4.2.2(d) (2 hours per quarter), there is no specific requirement that the contractor furnish training during performance. Rather, the RFP requires a contractor to provide a training plan after award, RFP ¶ C.4.1, and it requires that employees receive basic and advanced training in certain areas. [deleted] Protester's August 4, 1999 Letter to GAO at 7, we find no requirement that it be so, so long as the plan submitted after award meets RFP requirements. The agency reasonably found [deleted] proposal acceptable in this regard.

The protester raises a challenge to [deleted] proposal related to wage determination rates. [deleted] The protester's proposal met the new, higher rate. The protester contends that the agency unreasonably ignored the risk created by [deleted] since any offeror would presumably receive a contract price adjustment to match a rate increase incorporated after award, as apparently happened with Securiguard here after award. In any event, since Securiguard and [deleted] offered prices more than [deleted] lower than OMNIPLEX did, [deleted] was insignificant in terms of the selection decision, and there is otherwise no basis for concluding that the issue would have any significant price impact.⁴ We therefore find that the agency reasonably found the [deleted] proposal acceptable and that OMNIPLEX is thus not an interested party to challenge the evaluation of the awardee's proposal, given the availability of [deleted] acceptable proposal with its lower price.

The protester also argues that the agency lost its past performance questionnaires. Considering our conclusion that the agency properly determined the protester's technical proposal to be unacceptable, review of OMNIPLEX's past performance questionnaires would have made no difference to the selection decision. See *Encore Management, Inc.*, B-278903.2, Feb. 12, 1999, 99-1 CPD ¶ 33 at 1 (our Office will not review matters that are academic).

The protest is denied.

Comptroller General
of the United States

⁴Similarly, to the extent that [deleted], contrary to Department of Labor rulings, as OMNIPLEX contends, a contractor would have to comply with Department of Labor regulations regardless of the language of its proposal. (Guard mount/dismount time is the period from which the guard signs out a firearm until he assumes his assigned post and the similar period from when he leaves his post until he turns in his firearm.)