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United States General Accounting Office
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Decision

Matter of: James J. Flanagan Shipping Corporation

File: B-286129

Date: November 27, 2000

James M. Davin, Esq., Julian & Seele, for the protester.
W. Robins Brice, Esq., Royston, Rayzor, Vickery & Williams, for P&O Ports Texas, Inc., an intervenor.
Col. Michael R. Neds, Capt. Charles T. Kirchmaier, Maj. Howard W. Roth, III, Department of the Army, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably rated protester's proposal unsatisfactory, such that it could not form the basis for award, where agency reasonably determined that proposal contained numerous material deficiencies including the lack of a management plan, a security and safety plan, a quality control plan and a cargo loss and damage control program.

DECISION

James J. Flanagan Shipping Corporation protests the award of a contract to P&O Ports Texas, Inc. under request for proposals (RFP) No. DAMT01-00-R-0007, issued by the Department of the Army for stevedoring and related services at the Port of Beaumont and Port Arthur, Texas. Flanagan contends that the agency misevaluated its proposal and improperly made award to P&O at a price higher than its own.

We deny the protest.

The RFP contemplated the award of a fixed-price, indefinite-quantity contract to perform stevedoring and related services for a 2-year period. Technical and cost proposals were to be submitted and proposals were to be evaluated in the areas of technical capability, past performance and price, with technical capability and past performance, in combination, being approximately equal to price. The technical capability factor included five equally weighted subfactors: understanding of the work; management plan; proposed contractor furnished equipment; proposed safety

and security plans and cargo loss and damage prevention program; and proposed quality control plan. Award was to be made to the firm submitting the proposal found to offer the best overall value to the government considering price and the non-price evaluation factors. The agency reserved the right to make award on the basis of initial offers, without discussions.[1]

The agency received numerous proposals, including Flanagan's and P&O's. Flanagan's offered price of [deleted] was low, but its proposal was rated poor understanding/high risk under the technical factor and good/moderate risk under the past performance factor. In assigning these ratings, the agency noted numerous material proposal deficiencies, in particular, the absence of a management plan, a safety and security plan, a cargo loss and damage prevention program, and a quality control plan. P&O's price of $1,164,375 was the second lowest, and its proposal was rated superior understanding/low risk under the technical factor and excellent-superior/low risk under the past performance factor. The agency identified no deficiencies in the proposal. On the basis of these evaluation results, the Army determined that P&O's proposal represented the best value, and made award to that firm on the basis of initial offers.

Flanagan maintains that the agency misevaluated its technical proposal, arguing, essentially, that most of the reportedly missing information was in fact included in its proposal and that, to the extent that there may have been informational deficiencies, its capabilities are nonetheless well known to the agency because the firm is the incumbent for this requirement.

In reviewing protests challenging an agency's evaluation of technical proposals, our Office does not independently reevaluate proposals; rather, we limit our review to considering whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable procurement statutes and regulations. McHargue Constr. Co., B-279715, July 16, 1998, 98-2 CPD ¶ 21 at 5. Moreover, agencies are required to evaluate proposals based solely on the material submitted, and offerors run the risk of having their proposals downgraded or rejected where the proposal as submitted is inadequately written. Id. at 6.

The record supports the agency's evaluation conclusions. Regarding the management plan, the RFP required offerors to identify managerial control and supervision plans; submit key personnel resumes showing the managerial experience

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[1] Under the technical capability factor, proposals were assigned adjectival ratings of superior understanding, satisfactory understanding or poor understanding, and risk ratings of high, moderate or low. Under the past performance factor, the proposals were assigned ratings of superior, excellent, good, marginal, or unacceptable, and performance risk ratings of low, moderate or high.

and training of the individuals proposed; and propose staffing plans for the allocation of manpower, including the numbers and types of labor gangs and the offeror's plan for interfacing with the government. RFP at 41. Flanagan's technical proposal (which consists of only three pages) provides only general information in describing its management plan. The proposal represents--without any supporting detail--only that Flanagan is [deleted]. Flanagan Technical Proposal at 1-2. The agency found that this general, skeletal outline was inadequate to meet the management plan requirement, since it did not set forth a plan for [deleted]; did not describe the firm's [deleted]; and did not even include information showing the [deleted]. Given the absence of the required detailed information from the proposal, we have no basis for questioning the agency's conclusion that Flanagan's proposal was deficient in this area.

With regard to the safety and security plan, the RFP specifically required offerors to demonstrate that they had a safety plan that complied with all applicable federal, state and local safety and fire regulations (including applicable OSHA provisions); provided for conducting safety briefings at the change of each shift; and ensured that all of the contractor's equipment was operated and maintained in accordance with applicable OSHA standards. RFP § C at 2, 42. Flanagan's proposal did not include detailed information responding to this requirement, stating in its entirety only that:

> [deleted]

Flanagan Technical Proposal at 3. The agency found that this general statement did not set forth safety and security procedures that would meet the requirements of the solicitation's statement of work. The proposal also did not address methods for ensuring the security of all cargo, freight and equipment that might be tendered by the government, as required under the statement of work. RFP § C at 2-3.

The agency's finding with regard to Flanagan's quality control plan was similar. The requirements of the solicitation included showing that the offeror had a checklist quality control procedure to review work being performed to ensure compliance with a performance requirements summary attached to the solicitation, RFP § C at 3, and Flanagan's proposal states in its entirety:

> [deleted]

Flanagan Technical Proposal at 3. Finally, Flanagan's proposal does not mention the cargo loss and damage prevention plan required by the RFP. RFP at 42.

Given Flanagan's failure to provide the information specifically called for by the RFP in several different areas, the agency could not evaluate the firm's proposal in those areas. The fact that the agency may have been familiar with Flanagan's capabilities was not a substitute for an adequately written proposal; as noted above, agencies are required to evaluate proposals based on the material submitted. McHargue Constr. Co., supra. We conclude that the agency reasonably rated the proposal

unsatisfactory under the technical evaluation criterion, such that the proposal could not form the basis for award.[2]

The protest is denied.[3]

Anthony H. Gamboa
Acting General Counsel

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[2] Flanagan complains that the agency also misevaluated its proposal under the past performance factor. However, given the unacceptability of its proposal from a technical standpoint, we need not consider these additional arguments; even if Flanagan were correct, its proposal would remain unacceptable based on the deficiencies discussed above. Price Negotiation Memorandum at 10.

[3] Flanagan asserts that the Army improperly failed to consider that P&O was acquired by a larger concern during the pendency of the acquisition, and that the agency thus had no assurances that the resources offered by the predecessor concern would be available for contract performance. The premise of the protester's assertion is incorrect. The record shows that the predecessor concern was acquired prior to the deadline for submitting offers; during the acquisition, the successor concern merely changed its name from Fairway Terminal Corporation to P&O. Contracting Officer's Statement at 3. Consequently, there was no change in the entity making the offer and no reason for the agency to question whether the resources offered would be available.