



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Alltech Engineering Corp.

File: B-414002.2

Date: February 6, 2017

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Corps of Engineers, for the agency.
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GAO, participated in the preparation of the decision.

DIGEST

Protest that agency was required to seek clarification before rejecting the protester's proposal as technically unacceptable is denied where the agency was under no obligation to seek clarifications regarding the proposal's material omission of a technical narrative required by the solicitation.

DECISION

Alltech Engineering Corp., a small business located in Mendota Heights, Minnesota, protests the rejection of its proposal under request for proposals (RFP) No. W912BV-16-R-0004, issued by the Department of the Army, Corps of Engineers, Tulsa District (Corps), to repair Tainter (*i.e.*, radial flood) gates at Hulah Lake Dam in Copan, Oklahoma. The protester contends that the agency was required to seek clarification from Alltech before rejecting its proposal as technically unacceptable because of an allegedly minor clerical omission.

We deny the protest.

BACKGROUND

The RFP, which was set aside for small businesses, provided for the award of a fixed-price construction contract on a lowest-priced, technically acceptable basis, considering four evaluation factors: specialized experience, proposed contract duration and summary schedule, past performance, and price. RFP, amend. 1, at 7-8, 10, 28. The RFP stated that the Corps intended to make award without discussions, but that the agency reserved the right to conduct discussions if

necessary. Id. at 8, 16. The solicitation instructed offerors to submit separate technical and price proposals, with detailed submissions for each evaluation factor. Id. at 8-15.

With respect to the second evaluation factor (hereinafter, duration and schedule), offerors, in their technical proposals, were to: (1) propose a contract duration not to exceed 383 days; (2) submit a summary level construction schedule, including construction phasing; and--at issue here--(3) provide a narrative explanation of the proposed phasing plan, crew assembly and work schedule(s), and safety plan. Id. at 11-12, 32. The RFP stated that the agency would evaluate the narrative to determine whether the offeror's proposed phasing plan, work crew assembly and work schedule, and safety plan were realistic and logical. See id. at 12. Offerors were advised that the intent of these submissions was to provide enough detail to demonstrate the offeror's understanding of the project. Id.

The Corps received four timely proposals, including from Alltech and Blastco, Inc. (a small business located in Downey, California), which were evaluated as follows:

	Specialized Experience	Duration & Schedule	Past Performance	Overall Rating	Price
Alltech	Acceptable	Unacceptable	Acceptable	Unacceptable	\$4,585,000 ¹
Blastco	Acceptable	Acceptable	Acceptable	Acceptable	\$4,815,000

AR, Tab 5, SSD, at 2-3.

The Source Selection Evaluation Board (SSEB), which evaluated technical proposals, found Alltech's proposal unacceptable under the duration and schedule evaluation factor, because it did not provide a narrative explanation, including a phasing plan, crew assembly and work schedule, or safety plan, as required by the RFP. AR, Tab 4, SSEB Rep., at 2; see Protest, attach. 4, Altech Tech. Proposal, at 1-7. Thus, consistent with the terms of the solicitation, Alltech's proposal received an unacceptable overall rating.² Id. The SSEB found the three remaining

¹ The contract specialist, who evaluated price proposals, did not evaluate Alltech's proposed price because the proposal was found technically unacceptable. See Agency Report (AR), Tab 5, Source Selection Decision (SSD), at 2-4; Tab 9, Debriefing, at 2; Contracting Officer's Statement (COS) at 14. The prices and ratings of the other two offerors are not relevant here.

² The RFP stated that an unacceptable rating under any non-price factor would make the offer ineligible for award. RFP, amend. 1, at 16.

proposals technically acceptable, and therefore eligible for award. See AR, Tab 5, SSD, at 2. The agency did not conduct discussions or request revised proposals from offerors.³

The contracting officer (who was also the source selection authority for the procurement) reviewed and concurred with the SSEB's findings and conclusions, as well as the contract specialist's price analysis, and determined that Blastco submitted the lowest-priced, technically acceptable proposal with fair and reasonable pricing. AR, Tab 5, SSD, at 3-4. The Corps awarded the contract to Blastco for \$4,815,000, and Alltech filed this protest following a debriefing.

DISCUSSION

Alltech concedes that its proposal omitted "information" required by the RFP, but the protester argues that this was "an obvious minor clerical error" for which the Corps "had an obligation" to seek clarification. Protest at 4. Alltech maintains that it should have been obvious to the Corps that the omission was inadvertent, because the proposal otherwise included a critical path method (CPM) schedule with detailed information regarding the duration and schedule for each project phase. Id. at 5; Comments at 2. Moreover, the protester insists that the Corps knew that Alltech had a safety plan, because, according to Alltech, it has performed at least 32 projects for the Tulsa District and each project had a safety plan. Comments at 3. In any event, Alltech claims that the missing information was not necessary to evaluate whether the proposal was realistic and logical, or whether Alltech understood the project, therefore the omission was not material.⁴ See id. at 2. Alltech contends that the Corps abused its discretion by rejecting the proposal without seeking clarification and permitting Alltech to submit the missing information. See Protest at 4-5.

The Corps acknowledges that Alltech provided a detailed CPM schedule, but the agency maintains that without a narrative explanation of the proposed plans,

³ According to the contracting officer, she determined that discussions were not necessary, because the Corps received three acceptable offerors and the RFP informed offerors that the agency did not intend to conduct discussions. See COS at 13.

⁴ Alltech believes that it demonstrated its understanding of the project by submitting a detailed CPM schedule, among other things. Comments at 2. According to Alltech, it could not have prepared a CPM schedule unless Alltech had already developed a phasing plan and a crew assembly and work schedule. Id. Alltech states that "a contractor needs a phasing plan and a crew assembly and work schedule in order to prepare an overall, detailed CPM schedule[; i]n indeed, that information is subsumed by, and in large part included in, the CPM schedule." Id.

the SSEB had insufficient information to meaningfully review whether Alltech's proposed contract duration and schedule were realistic and logical. See COS at 13-14. The Corps argues that a narrative explanation of a phasing plan, crew assembly and work schedule, and safety plan, was a material solicitation requirement that could not be addressed through clarifications, but would have required the agency to conduct discussions and Alltech to submit a revised proposal. See Mem. of Law (MOL) at 3. The Corps maintains that Alltech had a duty, but failed, to submit a proposal with sufficient detail and documentation to demonstrate its understanding of the project, thus it was reasonable and consistent with the solicitation for the agency to reject Alltech's proposal. Id. We agree.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. An offeror is responsible for affirmatively demonstrating the merits of its proposal and, as here, risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. In reviewing protests challenging the rejection of a proposal based on the agency's evaluation, 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 accordance with the solicitation criteria and applicable procurement statutes and regulations. Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3; Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 4.

As a preliminary matter, we note that Alltech's pleadings and protest submissions, like its proposal, omit any discussion of the RFP's requirement that offerors submit a written narrative explaining the offeror's proposed contract duration and summary schedule. See generally Protest; Comments; attachs. Rather, Alltech focuses exclusively on its omission of a phasing plan, crew assembly and work schedule, and safety plan (which the protester variously describes as "missing documents," "supporting components," or "supporting material"). See Protest at 4-5; Comments at 1-4. Thus, Alltech, in our view, understates the RFP's submission requirements under the duration and schedule evaluation factor, and understates the extent of the omission from its technical proposal.

The solicitation, as discussed above, explicitly required offerors to provide a narrative explanation that included a proposed phasing plan, crew assembly and work schedule(s), and safety plan. RFP, amend. 1, at 11-12 (emphasis added). The RFP stated that the agency would evaluate the narrative to determine whether the offeror's proposed phasing plan, work crew assembly and work schedule, and safety plan were realistic and logical. See id. at 12 (emphasis added). Offerors were advised that the intent of these submissions was to provide enough detail to demonstrate the offeror's understanding of the project. Id. The RFP also included a number of admonitions in that regard. For example, offerors were "encouraged

to present their best technical proposal” and “cautioned to put forth their best efforts, and to furnish all information clearly to allow the Government to evaluate proposals[.]” because the agency did not intend to enter into discussions. Id. at 8, 16. Moreover, offerors were explicitly warned that material omissions may cause a technical proposal to be rejected as unacceptable; that proposals which are generic, vague, or lacking in detail may be considered unacceptable; that failure to include required information may result in the proposal being found deficient if inadequate detail is provided; and that the government could not make award based on a deficient offer. Id. at 16.

Contrary to Alltech’s view, its omission of a narrative explanation (describing the proposed phasing plan, crew assembly and work schedule, and safety plan) from its technical proposal was not a minor clerical error, but a material omission. Clearly stated RFP technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is technically unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B 293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5; Outdoor Venture Corp., B-288894.2, Dec. 19, 2001, 2002 CPD ¶ 13 at 2-3. Here, while Alltech disagrees with the Corps, it has not persuasively refuted the Corps’ assertion that without a narrative explanation describing Altech’s proposed plans, the agency had insufficient information to meaningfully review whether Alltech’s proposed contract duration and schedule were realistic and logical. Indeed, as noted above, Alltech simply fails to address the RFP’s requirement for a written narrative explanation.

To the extent that Alltech maintains that it should have been obvious to the Corps (based on Alltech’s submission of a CPM schedule) that Alltech had developed a phasing plan and crew assembly and work schedule, the Corps was not required to infer such information from Alltech’s technical proposal. See, e.g., Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. See LexisNexis, Inc., B-299381, Apr. 17, 2007, 2007 CPD ¶ 73 at 6-7 n.6 (an agency is under no obligation to parse a protester’s proposal to try to determine whether the proposal offers comparable sources of information).

Moreover, we agree with the Corps that the omission could not have been addressed through clarifications. The Federal Acquisition Regulation (FAR) describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. See FAR § 15.306. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to

clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Section 15.306(b)(2) of the FAR specifically provides that communications under this section “shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.” See also FAR § 15.306(b)(3) (“communications shall not provide an opportunity for the offeror to revise its proposal”).

Here, to become acceptable, Alltech’s offer would have required submission of a revised technical proposal to provide the missing narrative explanation of the proposed plans required by the solicitation. Providing an offeror the opportunity to revise its proposal and cure a deficiency would constitute discussions, not clarifications, because that would require the submission of information necessary to make the proposal acceptable.⁵ FAR § 15.306(d). Further, agencies are not required to conduct discussions when, as here, the solicitation advises of the agency’s intent to award a contract or task order on the basis of initial proposals. Id. Thus, although the protester views its omission to be minor or clerical, correction of the omission would have required the agency to conduct discussions.⁶

In any event, even if we were to assume that Alltech’s omission was a minor clerical error that could have corrected through clarifications, an agency is permitted, but not required, to obtain clarifications from offerors. Although agencies have broad discretion as to whether to seek clarifications from offerors, offerors have no automatic right to clarifications regarding proposals, and such communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. A. G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6.

Therefore, Alltech’s contention that the Corps was obligated to seek clarifications regarding its omission and permit the protester to submit the missing narrative,

⁵ We note that while Alltech states that it developed and prepared a phasing plan and crew assembly and work schedule, and that it has a safety plan, Alltech makes no such claims regarding the submission of such plans, in narrative form or otherwise. See generally Protest; Comments. This is notable because Alltech’s protest is premised on the assertion that the Corps “could have easily solved this issue merely by inquiring about it[.]” Protest at 5. In other words, Alltech suggests that it would have provided the supposedly existing, but inadvertently excluded, phasing plan, crew assembly and work schedule, and safety plan, if the contracting officer had simply asked why they were omitted from the proposal.

⁶ Alltech does not argue that the Corps was required to conduct discussions.

lacks merit.⁷ See, e.g., Alares, LLC, B-407124, Nov. 7, 2012, 2012 CPD ¶ 316 at 4-5 (Protest of agency's evaluation of protester's proposal is denied where the proposal failed to address compliance with infection control procedures and provide a construction safety plan, as required by the solicitation, and agency was not required to seek clarification or infer or piece together such information from the protester's proposal.).

In sum, we find no basis to question the agency's evaluation of Alltech's technical proposal and the protester's allegations to the contrary only reflect its disagreement with the agency's evaluations, which provides no basis to question the reasonableness of the agency's judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11; see, e.g., Mike Kesler Enters., B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 3-4 (agency reasonably determined that protester's proposal did not provide sufficient detail and was technically unacceptable where proposal lacked clear and consistent language and information necessary to determine if the proposal would function as proposed).

The protest is denied.

Susan A. Poling
General Counsel

⁷ Although our decision does not specifically address each of the protester's arguments, we have considered all of its assertions and find none furnishes a basis for sustaining its protest. For example, in support of its protest, Alltech cites Griffy's Landscape Maint. v. United States, 46 Fed. Cl. 257, 260 (2000), in which the Court held that the contracting agency had a duty to permit an offeror to furnish insurance contact information missing from its proposal, an omission the Court characterized as a clerical mistake. Subsequent decisions have questioned the holding in Griffy's in the context of negotiated procurements. See Camden Shipping Corp. v. United States, 89 Fed. Cl. 433, 438 n.5 (2009); C.W. Over & Sons, 54 Fed. Cl. 514, 521 n.10 (2002). In any event, the holding in Griffy's applied only to errors that are clerical and minor in nature, which, as explained above, is not at issue here. Similarly, Alltech cites BCPeabody Constr. Servs., Inc. v. United States, 112 Fed. Cl. 502 (2013), for the proposition that the agency should have sought clarification regarding the omission from Alltech's proposal. The Court's decision in BCPeabody, however, is not controlling on this Office. Moreover, the BCPeabody case is clearly distinguishable from the case at hand. In BCPeabody, the court concluded that the agency should have conducted clarifications to address the experience of the protester's proposed subcontractor and specifically noted that the case did not concern information relating to the features of the offer.