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Decision

Matter of: Research Analysis & Maintenance, Inc.; Westar Aerospace & Defense Group, Inc.

File: B-292587.4; B-292587.5; B-292587.6; B-292587.7; B-292587.8

Date: November 17, 2003

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Karen L. Manos, Esq., and Gregory S. Seador, Esq., Howrey, and Linda T. Maramba, Esq., for Northrop Grumman Technical Services, Inc., an intervenor.

Maj. Leslie A. Nepper, and Capt. Peter G. Hartman, Department of the Army, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where, based on a reasonable interpretation of agency's stated expectations in the solicitation with respect to the desired staffing approach, protester, the incumbent contractor, was misled into proposing a staffing approach--involving a significant reduction in core staffing from the historical staffing, reliance on extensive cross-training, and use of surge staffing to perform a significant portion of the operational requirement--that the agency viewed as essentially unacceptable.

DECISION

Research Analysis & Maintenance, Inc. (RAM) and Westar Aerospace & Defense Group, Inc. (COBRO) protest the actions of the Threat Systems Management Office (TSMO), Department of the Army, in conducting the procurement and making award to Northrop Grumman Technical Services, Inc. (NGTS) under request for proposals (RFP) No. DABK39-03-R-0007, for maintenance and operation of foreign threat systems. RAM and COBRO challenge a number of aspects of the procurement, including the terms of the reopening of discussions after prior protests by RAM and COBRO, the evaluation of potential organizational conflicts of interest (OCI), and the evaluation of revised proposals leading to reaffirmation of the prior award to NGTS.

We sustain RAM's protest and deny COBRO's protest.

The RFP contemplated the award of a cost-plus-award-fee/award term contract, with a base period of 3 years, with six 2-year award terms, for an overall possible term of 15 years, to operate and maintain TSMO ground and aviation systems and their supporting equipment.¹ Offerors were to submit written past/present performance and cost volumes, and make an oral presentation (including slides). Award was to be made to the responsible offeror whose proposal conformed to the RFP and was determined to be the most advantageous to the government considering price and non-price factors. The "best value" proposal was to be determined based on three evaluation factors: (1) technical merit, including (in descending order of importance) subfactors for competence and experience, program management, mission understanding, employee recruitment and retention, key personnel, and (as subsequently added) organizational conflict of interest (OCI); (2) past and present performance, rated as performance risk; and (3) cost (also denoted as price). Proposals were assigned color ratings under the technical merit subfactors (other than the OCI subfactor) as follows: (1) purple, indicating a proposal that demonstrates competence and far exceeds the minimum requirements of the criteria, and has a high probability of success; (2) green, indicating a proposal that demonstrates competence and exceeds the minimum requirements, and has an above average probability of success; (3) blue, indicating a proposal that meets the minimum requirements and has a good probability of success; (4) yellow, indicating a proposal that fails to meet the minimum requirements of the criteria but may through negotiations, and has a low probability of success; or (5) red, indicating a proposal that fails to meet the minimum requirements and needs major revisions. Technical merit was much more important than performance risk, which was much more important than cost.

Initial proposals were received from eight offerors, including NGTS, RAM (the incumbent contractor), and COBRO. The cost proposals from four of the offerors, including COBRO, were considered noncompetitive, and the firms were furnished an opportunity to withdraw from the competition. Five offerors, including COBRO,

¹ TSMO is responsible for providing realistic threats during the testing of United States weapon systems and during training and other exercises. Specifically, TSMO is tasked with the assembly of intelligence information and the design, development and procurement of limited quantities of operational hardware simulations of threat systems. TSMO is responsible for operating and maintaining these threat simulators and a significant inventory of actual foreign ground and aviation systems. Many of the foreign weapon systems in TSMO's inventory are 20, 30, 40, or even 50 years old and are based on old technology. For example, the ground systems may use tube technology that is no longer taught or used.

proceeded to make oral presentations. Based upon its evaluation of initial proposals, TSMO determined that NGTS's represented the best value, and made award to that firm.

Upon learning of the resulting award, and after being debriefed, RAM and COBRO protested to our Office, questioning the agency's interpretation of the specifications, arguing that the solicitation was ambiguous, and otherwise challenging the evaluation of proposals and conduct of the procurement. In response to the protests, TSMO advised our Office that it would undertake corrective action. TSMO amended the RFP to provide for evaluation of potential OCIs, and advised our Office that, after receipt of responses to the amendment, it would reevaluate technical and cost proposals as required and make a new best value source selection decision. Our Office thereupon dismissed RAM's and COBRO's protests as academic. (B-292587; B-292587.2, Aug. 15, 2003).

Based upon offerors' responses to the amendment, TSMO again determined that NGTS's proposal represented the best value. Although the evaluated cost of NGTS's proposal (\$[DELETED]) was higher than RAM's ([DELETED]), even after the cost of [DELETED] additional staff (approximately \$[DELETED]) had been added to the evaluated cost of RAM's proposal, NGTS's proposal was rated higher under the four most important technical merit subfactors. Under the experience/competence subfactor, NGTS's proposal was rated green, while RAM's was rated blue. Although NGTS was assigned a weakness for lack of direct experience with foreign aviation systems, the agency viewed that weakness as mitigated by NGTS's experience with American aviation systems and it assigned the firm a strength based on its overall experience with complex ground and aviation systems, including foreign weapons systems identical to those under the contemplated contract. In contrast, RAM, the incumbent contractor, was assigned a weakness under the experience/competence subfactor on the basis that its proposal of a core staff for ground systems of only [DELETED] staff personnel--significantly lower than the ground systems staffing of [DELETED] staff under its contract with TSMO--was "highly risky." RAM Debriefing, Sept. 3, 2003, at 4. Given the reduction in RAM's proposed core ground systems staff, RAM's resulting overall staffing of [DELETED] core, full-time equivalent staff (plus [DELETED] surge staff [DELETED]) was significantly lower than the current staffing of [DELETED] under its contract, RAM Oral Presentation, Slide 53; RAM Price Proposal at 13-19, the agency's independent estimate of [DELETED] staff, and NGTS's proposed [DELETED] staff.

RAM's proposal of lower core staffing likewise contributed to its proposal's receiving a yellow rating under the program management subfactor. Although RAM's proposal was assigned strengths for an excellent aviation program management proposal, excellent marketing plan, and for proposing a new information management system (IMS) with "high" potential, the proposal also was assigned a number of weaknesses, including a "too slim" core organization, no capability to "reach back" into the firm for additional personnel, cross training its

staff in too many systems, and the use of an untried IMS. RAM Debriefing, Sept. 3, 2003, at 5. In contrast, NGTS's proposal received a purple rating under the program management subfactor on the basis of an efficient organization, "tremendous reach back capability," centralization of functions, and empowerment of employees. NGTS's proposal received purple ratings under both the mission understanding and employee recruitment subfactors, while RAM's received only green ratings. Among the weaknesses assessed RAM's proposal under the employee recruitment subfactor was RAM's reliance on part-time, "surge" staff, which the agency found was risky. Both NGTS's and RAM's proposals received green ratings for key personnel. Although both proposals also initially received a low performance risk rating based on past and present performance, RAM's risk rating was downgraded to low/moderate risk based on the agency's determination that its OCI plan was only marginally acceptable (and less advantageous than NGTS's acceptable plan). Source Selection Decision at 5; POM/PNM at 5. As for COBRO, its cost proposal, with an evaluated cost of \$[DELETED]million, and proposed staffing of [DELETED] personnel, was determined to be unreasonable.

CORE STAFFING REQUIREMENT

RAM's Protest

RAM challenges the evaluation of its proposed effort as understaffed, and the consequent downgrading of its proposal under the technical merit factor and adjustment of its evaluated cost upward to account for the addition of [DELETED] personnel to its proposed ground systems staff. In this regard, RAM stated in its proposal that it was proposing a core staffing level to meet the solicitation's maintenance requirements, and that, for operational missions beyond those that could be supported by that core maintenance staffing, it would provide additional maintenance/operators, as necessary, from a pool of surge employees (who normally would be recalled for only 1 day of work each month). RAM Price Proposal at 13-14. RAM maintains that, at minimum, its proposed lower level of staffing--[DELETED] staff, including a core, full-time staff for ground systems of [DELETED]--was in accord with a reasonable reading of the RFP regarding the required core staffing. The Army stands by its evaluation conclusions.

The RFP generally described the statement of work (SOW) as providing "non-personal services such as operation and maintenance of foreign threat systems (aviation and ground systems), engineering, training, analysis, management and technical support" of TSMO. SOW § C.1.1. Section C.1.3.4.3 of the SOW specifically provided as follows:

Contractor Operators. You shall provide qualified maintenance technicians as operators to simultaneously operate different types of threat systems. You shall be proficient and provide skilled operators for all threat systems in the TSMO inventory. You shall maximize the

utilization of maintenance personnel by cross training to reduce the number of maintainers/operators and increase the number of threat systems in an active operational status required.

SOW § C.1.3.4.3. The SOW further provided as follows:

Contractor Operators. You shall provide qualified operators to simultaneously operat[e] the systems identified in Enclosure 5, Simultaneous Operation System Density. You shall be proficient and provide skilled operators for the remaining systems in Exhibits D, E, and K. You shall maximize the utilization of maintenance personnel to accomplish the operator functions.

SOW § C.5.6.1. The Army relies upon these provisions in support of its position that the RFP required offerors to propose a core staff sufficient both to maintain and to operate TSMO's systems.

RAM, on the other hand, in support of its view that the RFP required offerors to propose core staffing only for maintenance, and not for operations, or surge, requirements, cites several written questions and answers incorporated into the solicitation. In this regard, RFP § B.2, Adjustment to Fee, noting that "the Contractor may expect periodic fluctuations in staffing above proposed core staff due to changing workload requirements ever present in a dynamic testing environment," provided for adjusting the award fee "for each manyear in excess of the proposed core manning level." RFP § B.2. In response to a question as to the meaning of the reference to "proposed core manning level," TSMO responded that offerors were "to propose the costs for providing a CORE staff responsible for maintenance of the equipment and other management requirements. In your oral presentation you will address how you will meet surge requirements as the need arises." RFP, amend. No. 0002, Question and Answer No. 63. Likewise, in response to a question concerning when the simultaneous operation density figures referenced in SOW § C.5.6.1 would be furnished, the agency responded that the offerors were "being asked to propose a CORE group to handle maintenance. Your proposal will address how you will ramp up with an adequate number of operators when needed. We have provided you with the use of systems over the past three years." RFP, amend. No. 0002, Question and Answer No. 58. As further support for its position, RAM cites statements of the contracting officer made during the site visit. In this regard, according to TSMO, "[i]n order to reduce costs for providing these services, the contractors were asked to bid on a core group of full-time employees and to have the capability to obtain additional personnel during surge requirements." Contracting Officer's Statement (COS), Aug. 22, 2003, at 1. Further, according to the contracting officer, when asked about the level of effort desired by the agency, she advised that: "We are not setting the level of effort. We are looking for innovation. The correct number may be 60, may be 80, may be 100. That is for you to propose." COS, Sept. 29, 2003, at 6.

When a dispute exists as to the meaning of a solicitation requirement, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all the provisions of the solicitation. Energy Maint. Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234 at 4. Here, RAM's proposal reflected the RFP as clarified. Specifically, the RFP as clarified defined the requested core staffing in a manner that indicated a desire for a reduced operational component. In instructing offerors "to propose the costs for providing a CORE staff responsible for maintenance of the equipment and other management requirements," "to propose a CORE group to handle maintenance," and to address how they "will ramp up with an adequate number of operators when needed," the RFP indicated that the core staffing should be based on the maintenance requirement, with any additional staffing required for operations to come from surge staffing. RFP, amend. No. 0002, Question and Answer Nos. 58, 63. Further, although not binding on the agency, the contracting officer's statements during the site visit—instructing offerors to reduce costs by bidding on a core group of full-time employees, with the capability to obtain additional personnel during surge requirements, and raising the possibility that significantly lower staffing might be acceptable—reinforced this direction. COS, Sept. 29, 2003, at 1, 6.

We conclude that RAM's proposal to meet the solicitation's maintenance requirements with a core staff, and to meet additional operational missions by providing additional maintenance operators, as needed, from a pool of surge employees, was consistent with the RFP. In these circumstances, TSMO's assignment of weaknesses to RAM's proposal on account of its reduced core staffing, reliance on surge staffing for some operational requirements, and attempt to mitigate the directed staffing reduction by extensive cross-training, was unreasonable, and we sustain RAM's protest on this basis.

COBRO's Protest

COBRO asserts that the original evaluation was unreasonable—and that there thus was no basis for the agency's reopening of the evaluation in response to its and RAM's initial protests. In this regard, COBRO maintains that, although its original proposal was based on a reasonable interpretation of the RFP as requiring full staffing, a latent ambiguity in the RFP with respect to the agency's concepts of core and surge staffing resulted in its otherwise reasonable staffing approach being found to be excessive and its cost unreasonable. COBRO asserts that, while it offered staffing ([DELETED] staff) sufficient, based on the historical workload, to operate and maintain TSMO's systems, the agency apparently intended, by distinguishing in the RFP between core and surge staffing, to require that offerors propose something less than the staffing required for the historical workload. (As noted above, TSMO's independent estimate of the required staffing was [DELETED].)

COBRO's protest is based on an incorrect premise. As discussed above, the agency, like COBRO, interpreted the solicitation as requiring core staffing based on

performing both the maintenance and operations requirements. Consistent with that interpretation, the agency selected for award an offeror proposing core staffing [DELETED]. Since COBRO's proposal thus was not downgraded based on its reading of the RFP, we deny COBRO's protest.

OCI

RAM challenges the evaluation of its OCI mitigation plan as increasing the performance risk associated with its proposal. RAM's OCI plan focused on the firm's view that, since it was not involved in the development of weapons systems, and it intended to supplement its staffing when needed with personnel from its surge pool of "alumni," who it claimed were unlikely to raise OCI concerns, there were no foreseeable actual or potential OCI issues. TSMO determined, however, that it was unreasonable for RAM to assume that it would be able to handle all of the new technologies likely to be encountered over the potential 15-year period of the contract without recourse to outside technical expertise. TSMO thus rated RAM's plan marginally acceptable, and downgraded RAM's performance risk from low (based on past/present performance) to low/moderate.

We find that TSMO reasonably viewed with concern RAM's failure to describe an approach to avoiding OCI issues in the event that it entered into new, contractual relationships for outside technical assistance. As asserted by the agency, it was unreasonable for RAM to assume that it would not need to look outside the company (and RAM's pool of surge personnel) for technical expertise sometime during the potential 15-year period of the contract. Given the reasonable possibility that RAM would require recourse to outside technical expertise sometime during the potential 15-year period of the contract, and given the possibility that such assistance might carry with it OCI concerns, it was not unreasonable for the agency to expect that RAM's mitigation plan would address the OCI implications of such an eventuality.

However, we also find that the agency failed to apply the same strict standard in evaluating NGTS's mitigation plan as acceptable and its risk as low. In this regard, NGTS's OCI plan contemplated a number of possible responses when faced with a potential OCI, including (depending on the nature of the potential OCI) [DELETED]. NGTS OCI Plan, attach. 2, at 3-4. TSMO concluded that OCIs would be rare and that NGTS's mitigation plan would effectively eliminate OCIs that did arise. In this regard, TSMO states that, in the event it is faced with an actual OCI, it will either, as it has in the past, ask other military services or the intelligence community to provide operators, or award a short-term contract to another firm [DELETED]. Given the availability of operators from other military services or the intelligence community, TSMO expects to have to award a short-term, limited contract for support services no more than 3-5 times over the potential 15-year period of the contract. TSMO Comments, Oct. 23, 2003, at 4-5; Declaration of TSMO Operations Team Leader, Oct. 23, 2003, at 4-6.

Even if TSMO reasonably concluded that the OCIs resulting from award to NGTS could be avoided or mitigated such that award to NGTS was not precluded, it does not follow that there were no OCI concerns that had to be reflected in the evaluation, at least in light of the strict standard applied in evaluating RAM's mitigation plan. It is clear from the record that the agency was fully aware during the evaluation that, in some limited number of instances, an award to NGTS likely would require TSMO to proceed outside the terms of NGTS's contract and have contract work performed by some other contractor or government entity. This likely outcome does not appear to have been factored into the agency's evaluation of NGTS's proposal, despite the agency's view during its evaluation of RAM's proposal that RAM's failure to plan for a merely potential OCI warranted downgrading RAM for performance risk. We conclude that the agency did not evaluate the proposals on an equal basis, and that the evaluation in this regard therefore was unreasonable. Symlicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 5.

CONCLUSION

Based on our conclusions, we sustain RAM's protest. While it is not possible to determine the precise impact of the evaluation deficiencies on the award decision, there is no basis for finding that they were not material. In this regard, as discussed above, the evaluated weaknesses concerning RAM's proposed staffing approach negatively affected RAM's evaluation under three of the six (including the two most important) technical merit subfactors, and also led to RAM's proposed cost being viewed as unrealistic. In addition, the agency's unreasonable failure to account in its evaluation for the OCI concerns that would arise from an award to NGTS negatively affected RAM's competitive standing relative to NGTS. Since RAM's evaluated price also was [DELETED] than NGTS's, we conclude that RAM was competitively prejudiced by the evaluation deficiencies. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

We recommend that TSMO amend the RFP to reflect its actual minimum needs with respect to staffing, conduct general discussions with offerors in the competitive range, and request revised proposals. In the event that its evaluation of revised proposals results in the determination that an offer other than NGTS's represents the best value, the agency should terminate NGTS's contract for convenience. We also recommend that the agency reimburse RAM its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2003). RAM's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

RAM's protest is sustained, and COBRO's protest is denied.

Anthony H. Gamboa
General Counsel