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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: AHNTECH, Inc.

File: B-293582

Date: April 13, 2004

Sam Ahn for the protester.

Eric Kattner and Capt. Richard E. Alford, Department of the Air Force, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation advised offerors that agency intended to make award without discussions, but agency did issue clarification requests to offerors, protester's unsolicited proposal revisions in response to clarification requests did not convert clarifications into discussions.
 2. In determining whether protester's proposal demonstrated adequate management capabilities, agency reasonably found that proposal's failure to include plan for turn-in of significant quantities of former government furnished equipment and failure to offer sufficient fire protection personnel warranted elimination of proposal from the competition.
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DECISION

AHNTECH, Inc. protests the agency's decision to eliminate its proposal from the competition under request for proposals (RFP) No. F02604-03-R-0041, issued by the Department of the Air Force for operations and maintenance (O&M) services. AHNTECH asserts that the agency improperly evaluated its proposal and improperly refused to allow the firm to revise its proposal.

We deny the protest.

The RFP sought proposals to provide all personnel, vehicles, equipment, tools, materials, supervision, and all items and services necessary to perform a variety of O&M services in support of the F-16 fighter pilot training program and supporting facilities at the Gila Bend Air Force Auxiliary Field and Barry M. Goldwater Range at

Luke Air Force Base (AFB), Arizona. The statement of work (SOW) described the tasks, operational requirements, and personnel requirements to perform such services as airfield/manned range operations and maintenance, civil engineering, fire protection, security forces, logistics, air traffic control, and environmental engineering. The RFP contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a 5-month base period, with 7 option years.

Proposals were to be evaluated under three factors: technical acceptability, past performance, and price, with past performance considered significantly more important than price. Technical proposals were evaluated on a pass-fail basis under two technical subfactors—soundness of mobilization and transition plan and soundness of accounting and purchasing systems. The purpose of the first subfactor was to ensure that the offeror had demonstrated adequate management capabilities to ensure a smooth transition with no loss of services. The plan was to be evaluated using criteria that included proposed manning, a mobilization plan for infrastructure projects, and a sound acceptance/inventory plan for transfer of vehicles and other government equipment. Any proposal that did not pass the mobilization/transition plan subfactor would not be evaluated further and would be eliminated from the competition. The RFP advised that the agency intended to award the contract without conducting discussions.

AHNTECH was one of several offerors submitting proposals, which were evaluated by the agency. Based on their initial evaluation, the evaluators issued 52 clarification requests (CR) to AHNTECH and the firm responded to all of them. After reviewing AHNTECH's responses, the agency concluded that the proposal was inadequate in areas critical to performance of the requirement. Among other failures, the evaluators found that AHNTECH had failed to propose sufficient fire protection personnel and had submitted an unacceptable plan for turning in government-furnished equipment (GFE). Because AHNTECH's proposal was found unacceptable under the first subfactor, the contracting officer excluded it from further consideration in the evaluation. Award was made to another offeror on the basis of initial proposals. After receiving a debriefing, AHNTECH filed this protest.¹

DISCUSSIONS

In the course of responding to the agency's 52 clarification requests, AHNTECH submitted a number of revisions to its proposal. At its debriefing, the agency advised AHNTECH that the requests were only intended to clarify or enhance the agency's understanding of the proposal, and were not intended to provide the firm with the

¹ AHNTECH raised numerous issues in its submissions to our Office. We have considered them all and find that none has merit. This decision addresses the more significant issues raised.

opportunity to revise its proposal or to cure proposal deficiencies. The agency therefore did not consider the revisions in the evaluation. Debriefing at ¶¶ 2, 3, and 8. AHNTECH asserts that the clarification requests “exceeded the boundaries of technical clarifications and constituted discussions,” in response to which it should have been allowed to revise its proposal. Protest at 2. The protester concludes that the agency improperly refused to consider its revisions in the evaluation.

Whereas negotiations, or discussions, are exchanges with offerors in the competitive range that are undertaken with the intent of allowing proposal revisions, Federal Acquisition Regulation (FAR) § 15.306(d), clarifications are limited exchanges with offerors intended to resolve minor or clerical errors or to allow offerors to clarify matters such as the relevance of past performance information. FAR § 15.306(a). Where, as here, an agency states its intention to award on the basis of initial proposals, without discussions, an agency nevertheless may seek clarifications from offerors. FAR § 15.306(a); see Landoll Corp., B-291381 et al., Dec. 23, 2002, 2003 CPD ¶ 40.

There is no basis for finding that the agency engaged in discussions with the protester. Each communication with AHNTECH simply provided the firm with the opportunity to clarify, not modify, its proposal. The various performance requirements were listed in the 317-page SOW, but instead of very detailed proposals, the RFP required offerors to submit limited information to establish the soundness of their mobilization and transition plans, including an organizational chart listing the proposed manning requirements for each element of work and identifying the number of qualified /certified employees required. After reviewing AHNTECH’s proposal, which included an organizational chart showing its proposed personnel, the evaluators issued a variety of CRs, the majority of which sought amplification and clarification of AHNTECH’s proposed manning to flesh out what was not apparent from the face of the manning chart.

For example, several requests questioned how AHNTECH would meet the requirements with its proposed manning. CR Nos. AN 6-2, 7-3, 9-17, and 16-1. Apparently recognizing the intent of these CRs, AHNTECH explained in detail how its cross-utilization of personnel, multi-skilled and experienced leaders, and streamlined management would meet various of the SOW’s requirements. It then advised the agency that it had added personnel to “meet all requirements of the SOW.” Response to CR Nos. AN 6-2, 7-3, 9-17, and 16-1. Similarly, in another CR, the evaluator noted the number of proposed guards, their different qualification levels, and that, “historically,” the total number proposed would not be sufficient. CR No. AN 8-1. Again, recognizing the intent of the CR, AHNTECH explained how less qualified guards would be moved to the higher level once they were fully qualified. Response to CR No. AN 8-1. However, instead of explaining how its proposed guards would meet all the requirements, it submitted a revision that added upper level guards.

The contracting officer has broad discretion whether to open discussions. Colmek Sys. Eng'g, B-291931.2, July 9, 2002, 2003 CPD ¶ 123 at 7. Here, the RFP stated that the agency did not intend to open discussions, and the questions issued to AHNTECH were labeled “Clarification Request” and, rather than identify and seek correction of deficiencies or weaknesses, sought clarification of the firm’s proposal. As such, the clarification requests did not constitute discussions. By proposing additional personnel to meet the SOW requirements, AHNTECH, not the agency, disregarded the scope of the clarification process. The firm’s unilateral decision to modify its proposal could not and did not transform the agency’s clarifications into discussions.

TECHNICAL EVALUATION

AHNTECH challenges the agency’s evaluation regarding its plan for the turn-in of GFE and its proposed fire protection personnel. In AHNTECH’s view, the agency’s negative evaluations were unwarranted because its proposal met the requirements set forth in the RFP.

In reviewing a protest of an agency’s proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2. The evaluation here was unobjectionable.

GFE Turn-In Plan

The SOW (§§ V.5 and V.6) listed a limited amount of GFE and required the successor contractor, during the transition phase, to turn in all non-listed GFE to Luke AFB. SOW § 19.1.2.1. AHNTECH’s proposal discussed preparation of a GFE inventory and the firm’s intent to assume custody of all contract government property, but did not address turning in non-listed GFE. AHNTECH Proposal at 35. When the evaluators asked AHNTECH how it intended to turn in “the vast amount of GFE” in accordance with section 19 of the SOW, AHNTECH proposed to transfer the property to the Defense Reutilization and Marketing Office on paper and to use whatever GFE was still serviceable to meet the contract requirements. Response to CR No. AN 6-3. The agency found that AHNTECH’s proposal, as clarified, failed to comply with the SOW requirement for the turn-in of non-listed GFE.

We find nothing unreasonable in the agency’s conclusion. The SOW plainly called for AHNTECH to be responsible for turning in the non-listed property.² AHNTECH’s

² We note that the agency made clear, prior to the closing date, that plans to use the former GFE were not acceptable. Specifically, in response to an offeror’s suggestion that contractors be allowed to keep this property, repairing or replacing it as

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plan instead to use the property that it was required to turn in to meet its equipment and supplies responsibilities clearly was contrary to the SOW requirements, and raised doubts as to whether AHNTECH could adequately meet the SOW requirement that the contractor provide and replenish all equipment and supplies not furnished by the government necessary to perform the contract requirements. SOW § I.16.6.1. Since any attempt to revise the plan to meet the SOW requirements would necessitate material proposal changes, the agency reasonably evaluated AHNTECH's plan as "technically not correctable." Notice of Exclusion Letter, Dec. 8, 2003, at 1.

Fire Personnel

The SOW provided for the contractor to maintain sufficient numbers of Department of Defense (DoD) certified personnel to provide management, training, fire prevention, and administrative support, and to maintain two operational shifts in accordance with DoD Instruction (DoDI) 6055.6. SOW § 7.2. The SOW separately identified positions for assistant fire chiefs for operations (SOW § 7.3.2) and a fire prevention/training/safety officer (PTSO) (SOW 7.3.3); both positions required individuals to be qualified in all aspects of airfield, structural, hazardous materials firefighting, and confined space rescue. AHNTECH's initial proposal listed one assistant fire chief and no designated PTSO, leading the evaluators to issue clarification requests, one asking how many assistant fire chiefs were proposed, and another asking if there were a PTSO whose sole duties were those specified in the SOW. CR Nos. AN 7-3 and AN 7-4. AHNTECH responded that it had proposed a single assistant fire chief and that he would perform the PTSO duties. The agency found that AHNTECH's proposal, as clarified, failed to comply with the SOW requirements in these (and various other) respects.

We find nothing unreasonable in the agency's conclusion. The SOW plainly called for two operational shifts, and DoDI 6055.6 specifically identifies a requirement for two assistant fire chief (shift supervisor) positions. According to the agency, each operational shift is 48 hours on-duty and then 48 hours off-duty. With only one assistant fire chief, AHNTECH was essentially proposing to have no management or command personnel on duty during every other shift. Contracting Officer's Statement at 26. AHNTECH asserts that this evaluation conclusion was unreasonable because its proposal was based on having one of its lead firefighters, who allegedly met the stated qualifications, assume management responsibilities on the applicable shifts. Protest at 7. However, the agency reasonably determined that this approach was inconsistent with the SOW, which listed crew chiefs and fire fighters as separate positions from assistant fire chiefs. SOW §§ 7.3.4, 7.3.5, 7.3.6.

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necessary, the agency responded that it would "not consider this option" because the property was "old and in need of replacement" and most items "had exceeded their life expectancy." Question and Answer No. 160.

With regard to the PTSO, the agency notes that DoDI 6055.6, with which offerors were required to comply, identifies the PTSO as a separate position, Contracting Officer's Statement at 25, and in its pre-closing answers to questions, the agency specifically addressed the PTSO, verifying that it was a "separately staffed position." Answer No. 133. Although, as AHNTECH notes, the agency never amended the SOW to incorporate the questions and answers (they instead were made available electronically), this does not mean that AHNTECH was free to read the SOW inconsistently with answer No. 133. In this regard, SOW § 7.3.3 clearly described a separate position with specific duties not included in the SOW section outlining the qualifications for assistant fire chiefs. We think the plain import of this description was that a separately staffed position was contemplated, and answer No. 133 clarified that this was the case. We conclude that the agency could reasonably find AHNTECH's response to the PTSO requirement unacceptable.

As illustrated by the foregoing examples, based on our review, we find that the agency reasonably rejected AHNTECH's proposal as unacceptable under the soundness of mobilization/transition plan subfactor.

The protest is denied.

Anthony H. Gamboa
General Counsel