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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: STEM International, Inc.

File: B-295471

Date: January 24, 2005

C.S. Prakash, Ph.D., for the protester.

Kenneth A. Martin, Esq., Martin & Associates, for Integrated Systems Support Associates, Inc., the intervenor.

Edward N. Ramras, Esq., United States Marine Corps, for the agency.

Sharon L. Larkin, Esq., and Guy R. Pietrovito, Esq. Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of proposals for program management and engineering support services is denied, where record shows that the agency reasonably evaluated offerors' capability, experience, and price consistent with the solicitation's evaluation criteria, and reasonably determined that the awardee's technical superiority was worth the additional cost.

DECISION

STEM International, Inc. protests the award of a contract to Integrated Systems Support Associates, Inc. (ISSA) under request for proposals (RFP) No. M00264-04-R-0012, issued by the United States Marine Corps (USMC) for program management and engineering support services for the USMC headquarter's installation and logistics program.¹

We deny the protest.

The RFP, issued as a section 8(a) set-aside, provided for the award of a time and materials, indefinite-delivery/indefinite-quantity contract for a base year and four

¹ The protester was not represented by counsel and did not have access to source selection sensitive and proprietary information. Accordingly, our discussion in this decision is necessarily general in order to avoid disclosure of this information. Our conclusions, however, are based on our review of the entire record.

option years.² Award was to be made on a best-value basis, considering the following factors: (1) management capabilities and experience, (2) personnel qualifications and technical expertise, (3) knowledge of Department of Defense and USMC organization and installations and logistics programs, (4) past performance, and (5) price. Offerors were informed that the technical evaluation factors, when combined, were significantly more important than price, and that the technical evaluation factors were listed in descending order of importance. RFP § M.1.

The solicitation's statement of work described the services to be performed and personnel to be provided. In this regard, the RFP identified the positions of project manager, senior program analysts, and program analysts as "core team/key personnel." RFP § C.5.1. Resumes for these "core team/key personnel" were required for evaluation, see id. § M.1, and offerors were informed that during the first 120 days of the contract performance period, "no personnel substitutions [of core team/key personnel] shall be permitted unless such substitutions are necessitated by an individual's sudden illness, death, termination of employment or to meet specific personnel requirements described for individual task orders." Id. § H.1.

STEM and ISSA were among the seven offerors that responded to the RFP. Each proposal was evaluated by the agency's source selection board (SSB), which rated proposals as outstanding, acceptable, or unacceptable under the technical evaluation factors. In this regard, ISSA received a total of 4 outstanding ratings and 8 acceptable ratings; STEM received 2 outstanding ratings and 10 acceptable ratings. Neither offeror received any unacceptable ratings. AR, Tab 10, SSB Report, at 3.

The SSB found advantageous ISSA's proposed partnership with other companies to perform the requirements of the RFP. This, the SSB found, allowed ISSA to "draw on resources of 1500 people" from one of its team members, and added capability and experience in environmental, scientific, and technical services, as well as logistics support. The SSB found that, overall, the proposal "displayed a significantly deeper understanding of our work in the context of the [USMC's] logistics modernization efforts, and provided a significant 'reach back'³ capability to tap that experience, relationships, and personnel." The SSB also noted that the firm offered to recruit incumbent employees. Id. at 8.

² The contract was to replace a contract with a narrower scope of work, which was performed by EGG, Inc., a company which has since graduated from the section 8(a) program. Agency Report (AR) at 2.

³ In response to our Office's request for additional information, the agency explained that "reach back" capability refers to the contractor's ability to perform the work through employing its own personnel or resources, or that of its partners. Agency E-mail to GAO, Protester, and Intervenor (Jan. 13, 2005).

In contrast, the SSB noted that STEM did not offer to partner with other firms to bring a full range of capability to the contract. Although the SSB regarded STEM's proposed "contingent hire commitments" from various personnel of the incumbent contractor to be a proposal "strength," the SSB found that STEM itself lacked any experience with USMC, and further noted that a majority of the firm's experience related to United States Army and chemical munitions management and oversight. Additionally, the SSB found that a "major weakness" in STEM's proposal in comparison to the other proposals was that STEM "presented the status quo, without any clear articulation of where the [USMC] was headed within the logistics modernization arena and how that impacted what they would present or support via this contract." Id. at 14.

The SSB reported its findings to the source selection authority (SSA). The SSA adopted the SSB's technical findings and evaluated price, noting that ISSA's proposed price of \$6,513,811.20 was approximately 14 percent higher than STEM's price of \$5,719,958, and that as the third lowest-priced offer for the 5-year life of the contract, ISSA's price appeared fair and reasonable. AR, Tab 11, Business Clearance Memorandum, at 10.

The SSA selected ISSA for award, concluding that the additional cost to the government was warranted given the firm's greater "reach back" capability and experience with logistics management and facilities and installations programs. The SSA found that the "overall strength of [ISSA's] technical proposal and their ability within the partnership to address all the areas identified in the [statement of work] provides the highest level of confidence [that] the current and emergent contract requirements can be met and indicates the highest overall value of the proposals evaluated." Id. at 12. STEM was notified of the award and protested to our Office.

STEM challenges the agency's evaluation and source selection decision. It contends that the agency relied upon an unstated evaluation criterion, ignored the strength of STEM's experience resulting from its incumbent hire commitments, and failed to give sufficient consideration to its proposal's lower price. STEM also asserts that the awardee, which allegedly was hiring incumbent employees, engaged in a "bait and switch" of its proposed personnel.

Our Office will review an agency's evaluation of proposals to determine if the evaluation was reasonable and consistent with the RFP's stated evaluation criteria and applicable procurement statutes and regulations. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4. In evaluating a proposal, an agency may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. Id.

With respect to STEM's complaint that the agency relied upon an unstated criterion when it evaluated offerors' "reach back" capability, USMC asserts that this capability, which refers to an offeror's ability to call upon the personnel and other resources available from both itself and its team partners, is reasonably related to

evaluation factors (1), (2) and (3). Based on our review, we agree with the agency that these factors all contemplated that the agency would evaluate the capability of the offeror's team to call upon its personnel and resources to perform the work. For example, the RFP stated that offerors would be evaluated for their "experience and capabilities that demonstrate familiarity and expertise with [USMC] programs as described in the Statement of Work"; their demonstrated "understanding of [the USMC] Installations and Logistics program missions, functions and goals"; and employee "technical expertise and experience . . . related to support of installations . . . and military logistics programs." RFP § M.1.2. These statements contemplate that the agency would evaluate an offeror's capability and resources, which would include its ability to "reach back" to the resources of its team members. Accordingly, we find that the agency did not apply an unstated evaluation criterion in its evaluation.

We also find reasonable the agency's conclusions regarding the offerors' capability. As the record shows, ISSA had the ability to call upon 1,500 persons from just one of its team members, as opposed to STEM, which asserts that it has available a total of only 120 employees nationwide. AR, Tab 10, SSB Report, at 8; Protester's Additional Comments at 1. Moreover, ISSA's partnership approach, as evaluated by USMC, offered the agency a broad depth of experience with facilities and installations programs and management, and to an even larger extent logistics management, which are pertinent to the required effort here. AR, Tab 11, Business Clearance Memorandum, at 12.

STEM also complains that the agency gave insufficient consideration to the firm's personnel and experience, which includes the experience of the incumbent personnel that STEM identified as key employees. However, the record demonstrates that USMC recognized as a proposal strength the commitments that STEM obtained from incumbent personnel, but found that this was outweighed by STEM's lack of any past performance with USMC or experience beyond United States Army chemical munitions management and oversight, and the proposal's focus on maintaining the "status quo." *Id.* at 6. Although STEM disagrees with the agency's assessment, it has not demonstrated that it was unreasonable. See UNICCO Govt. Servs., Inc., B-277658, Nov. 7, 1997, 97-2 CPD ¶ 134 at 7 (mere disagreement with an agency's assessment does not show that the agency's judgment was unreasonable).

STEM also challenges the agency's best-value analysis, maintaining that it should have been awarded the contract based on its lower price. However, the RFP specified that the technical and past performance factors were "significantly more important" than price, and consistent with the evaluation criteria, the agency gave greater consideration to the technical superiority of ISSA's proposal over STEM's lower price. Thus, although the SSA recognized STEM's price advantage, she determined that the ISSA team's greater "reach back" capability and logistics/installation program support experience warranted paying the additional cost. STEM has not shown this trade-off judgment to be unreasonable.

STEM also asserts that ISSA engaged in an unlawful “bait and switch” of its proposed personnel, based on its belief the ISSA is now hiring incumbent employees to perform the work. STEM asserts that this is improper because some of these individuals issued commitment letters to STEM.

Generally, an offeror’s misrepresentation concerning personnel that materially influences an agency’s consideration of its proposal provides a basis for proposal rejection or termination of a contract issued based upon the proposal. The Centech Group, Inc., B-278715, B-278715.2, Mar. 5, 1998, 98-1 CPD ¶ 108 at 7. A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact on the evaluation. Id.

Here, ISSA has apparently not sought to replace any of its identified “core team/key personnel” with incumbents after award. Affidavit of Contracting Officer/SSA at 2. Moreover, the post-award hiring of incumbent personnel would be consistent with ISSA’s representation in its proposal that it would “leverage[] the depth of talent on the ISSA TEAM [by] recruitment of the right incumbent staff” to supplement its personnel. See AR, Tab 6, ISSA’s Technical Proposal, at 18. The record does not evidence that ISSA has engaged in a “bait and switch” with respect to its proposed personnel.

The protest is denied.

Anthony H. Gamboa
General Counsel