



**G A O**

Accountability \* Integrity \* Reliability

**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

## Decision

**Matter of:** Team Systems International

**File:** B-411139

**Date:** May 22, 2015

---

Christopher P. Mott for the protester.  
Madeline Shay, Esq., Department of the Army, Corps of Engineers, for the agency.  
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging the elimination of a protester's proposal from the competitive range is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations.

---

### DECISION

Team Systems International (TSI), of Ponte Vedra Beach, Florida, challenges the elimination of its proposal from the competitive range under request for proposals (RFP) W912DR-15-R-0011, issued by the Department of the Army, Corps of Engineers, for road paving and construction at Ft. Belvoir, Virginia. TSI argues that the agency's technical evaluation was unreasonable.<sup>1</sup>

We deny the protest.

### BACKGROUND

The RFP, issued on December 23, 2014, was set aside for small businesses and conducted under Federal Acquisition Regulation (FAR) part 15 and part 36. RFP

---

<sup>1</sup> TSI was not represented in this protest by counsel, and therefore no protective order was issued. Our discussion of the agency's evaluation of the protester's proposal is necessarily general, in order to avoid reference to source-selection sensitive or proprietary information.

at 1, 6. The RFP contemplated the award of three fixed-price contract line item numbers (CLINs) for construction work at Fort Belvoir, such as repaving parking lots and roads, and one optional CLIN for testing, removal, and disposal of contaminated soil. Id. at 3.

Award was to be made to the lowest-priced, technically-acceptable offeror, based on four evaluation factors: (1) past performance, (2) management approach, (3) technical approach, and (4) price. Id. at 6. The RFP advised that the non-price factors would be rated acceptable or unacceptable and that only offers rated acceptable under all non-price factors would be considered technically acceptable. Id. at 6, 11. The RFP also stated that the successful offer would be selected based on price, once a minimum level of technical capability was met, and that an offeror's failure to provide all requested information might adversely affect the evaluation. Id.

The RFP anticipated that an offeror could include two or more entities united in a "contractor team arrangement," as defined in FAR subpart 9.6. Id. at 7. Under FAR § 9.601 "contractor team arrangement" means an arrangement in which--(1) two or more companies form a partnership or joint venture to act as a potential prime contractor; or (2) a potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program. Entities forming a contractor team arrangement could rely on the experience and performance history of any member of the team, but in order to do so, the offeror had to provide a teaming agreement that included, among other things, a description of the nature of each entity's relationship (e.g., partnership, joint venture, or prime contractor/subcontractor).<sup>2</sup> Id. at 7-8.

With respect to past performance, the RFP required an offeror to submit no more than five projects of relevant scope and complexity that had been completed within the 6 years prior to the date of the solicitation. Id. at 9. The RFP explained that an offeror's team structure would determine the manner in which its past performance information would be evaluated. Id. at 8. For prime/subcontractor team arrangements, for which the prime contractor submitted the proposal, the RFP advised that the prime contractor would be considered the "primary offeror" and would be required to have completed at least fifty percent (50%) of the total number of projects submitted for past performance consideration.<sup>3</sup> Id. at 7-8.

---

<sup>2</sup> The RFP also contemplated that a mentor/protégé relationship could be a potential teaming arrangement, but required approval by the agency prior to proposal submission. RFP at 8. Neither the protester nor the agency have represented that TSI attempted to establish a mentor/protégé arrangement.

<sup>3</sup> The past performance evaluation approach for other team arrangements was different. RFP at 8. For example, in the case of joint ventures, the "primary offeror" experience could come from any of the entities involved in the venture. Id.

Under the technical approach factor, offerors were required to provide a pre-award project schedule to demonstrate a reasonable and realistic sequence of activities for the entire contract performance period, including, at a minimum, all mandatory tasks/critical activities and phasing. Id. at 11. The RFP required that performance be completed within 210 calendar days of the agency's issuance of the notice to proceed. Id. at 1, 37. The RFP specifications stated that construction should occur between May 1, 2015 and August 31, 2015. RFP Specifications, section 01 14 00 ¶ 1.3.2.

In response to the RFP, TSI timely submitted a proposal that included a teaming agreement. AR, Tab 5, TSI Proposal, Volume I, at 1-9; Volume II, at 9.<sup>4</sup> As relevant here, the teaming agreement includes TSI and two additional parties. AR, Tab 5, TSI Proposal, Volume I, at 5. Article 3 of the teaming agreement, entitled Exclusive Agreement, states “[t]he parties agree to work with TSI and other mutually agreeable vendors as its subcontractor(s) with respect to qualifications and/or a proposal for services for each identified [p]roject that is agreed upon between the parties pursuant to all applicable FARS [sic] under FAR 9.6.” Id. Article 5, entitled Relationship, states, “[n]othing in the Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind and the rights and obligations of the parties shall be limited to those expressly set forth herein.” Id.

As also relevant here, the protester's past performance response included four projects, one performed by the protester as a subcontractor to another firm, and three performed by one of TSI's other team members. Id. at 10-27. For the technical approach, TSI's proposal included a schedule under which work (after the notice to proceed) and mobilization (after submission and approval of preconstruction plans) was to begin in January 2015 and end in November 2015, i.e., approximately 290 days. Id. at 55-56.

Separate technical and price evaluation committees reviewed the technical and price proposals, documenting the evaluation results in reports that were then reviewed by the source selection evaluation board (SSEB). Contracting Officer's (CO) Statement at 5.

The technical evaluation board (TEB) rated TSI unacceptable in all three non-price factors. AR, Tab 6, Technical Evaluation Report (TER), at 37, 39, 41. Based on the information in the protester's teaming agreement, the agency determined that TSI's team represented a prime/subcontractor relationship in which TSI was the prime

---

<sup>4</sup> The protester's proposal does not include consecutively numbered pages. All references to page numbers are based on numbering added by our Office.

offeror.<sup>5</sup> Id. at 35; AR, Tab 9, Competitive Range Determination, at 4. Under past performance, the TEB recognized that TSI submitted a signed teaming agreement and evaluated the four projects submitted by the team in accordance with its understanding of TSI's team as a prime contractor and subcontractors. AR, Tab 6, TER, at 35. The TEB determined that TSI failed to show that it had performed 50 percent of the submitted projects as the RFP required of prime contractors. Id. at 37. Regarding the management approach, TSI was rated unacceptable because it failed to provide an organization chart showing relationships and lines of communication as required by the RFP. Id. at 38. Regarding the technical approach, the TEB also rated the protester as unacceptable based in part on the protester's schedule that began onsite construction work in February, despite the RFP requirement for performance to begin in May.<sup>6</sup> Id. at 40.

The SSEB then prepared a report containing ratings and a narrative summarizing the evaluation of each offer for the source selection authority, who was also the CO. AR, Tab 8, SSEB Summary of Findings, at 1. The SSEB's findings referenced and accepted the information provided by the TEB. Id. at 2-3.

The CO excluded TSI's proposal from the competitive range because it failed to meet all three of the mandatory technical requirements, and offered a price that was significantly above the average of the remaining proposals. AR, Tab 9, Competitive Range Determination, at 6. TSI was subsequently notified of its exclusion from the competitive range. AR, Tab 11, Notice to TSI, at 1. TSI requested and was provided a debriefing. On February 13, TSI timely protested to our Office.

## DISCUSSION

TSI challenges the agency's evaluation of its technical proposal, including its past performance rating. We have reviewed the protester's arguments and find that none provides a basis to sustain the protest or to question any of the agency's determinations. We address two of the protester's primary arguments below.<sup>7</sup>

---

<sup>5</sup> The agency also relied on the submission of TSI's commercial and government entity (CAGE), data universal numbering system (DUNS), and tax identification (ID) numbers with the SF 1442 to determine that TSI was the prime offeror. AR, Tab 9, Competitive Range Determination, at 4.

<sup>6</sup> The CO's statement notes that the technical and price committee evaluation reports erred in identifying March, rather than May, as the project start date, but that the competitive range determination, as well as TSI's debriefing, relied on the correct date. CO's Statement at 7 n.1.

<sup>7</sup> Because we conclude that the agency's evaluation of the protester's past performance was reasonable, as explained below, we need not consider whether  
(continued...)

In reviewing a protest that challenges an agency's evaluation of proposals, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. G4S-SJC, LLC, B-409694, B-409694.2, July 14, 2014, 2014 CPD ¶ 229 at 4. It is the offeror's burden to submit an adequately written proposal for the agency to evaluate; otherwise it runs the risk of having its proposal be found technically unacceptable. Menendez-Donnell & Assocs., B-286599, Jan. 16, 2001, 2001 CPD ¶ 15 at 3. Generally, offers that are not among the most highly-rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award are not required to be included in the competitive range. Global Eng'g & Constr. Joint Venture, B-275999.4, B-275999.5, Oct. 6, 1997, 97-2 CPD ¶ 125 at 3.

The protester challenges the agency's evaluation of past performance, arguing that the agency failed to understand that the "TSI team bid as an unincorporated contractor team pursuant to FAR subpart 9.6 in its entirety."<sup>8</sup> Protest at 2. In essence, TSI argues that the agency's alleged error in this regard tainted the entire evaluation and caused TSI's proposal to be excluded. Id.

The agency observes that TSI used several different corporate names in different parts of its proposal. Legal Memorandum at 2-3. Further, the agency asserts that because the protester's teaming agreement did not clearly identify the offeror, and expressly stated that it did not establish a joint venture or partnership, the agency reasonably understood the protester's team arrangement to be a prime/subcontractor relationship. Id. at 4-5, 6-7. As explained in further detail below, we agree that the agency's evaluation of the protester's past performance and experience in a manner consistent with that understanding was reasonable.

---

(...continued)

the agency's other findings provide additional bases to support the protester's exclusion.

<sup>8</sup> In its protest, the protester asserts that the agency failed to recognize the TSI team as a joint venture, prime contractor made up of two small businesses, with a subcontractor. See Protest at 2. However, in its comments, the protester agrees with the agency's conclusion that the team was not a joint venture and asserts that it never insisted that its offer came from a joint venture. See Comments at 2.

To the extent the protester challenges, generally, the adequacy of the debriefing, and, specifically, the agency's statements during the debriefing regarding the need for joint ventures to have CAGE codes and tax ID or DUNS numbers, see protest at 1-2, this is not a cognizable basis of protest. The adequacy of the debriefing is a procedural matter that does not involve the validity of contract award. The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2.

The protester's contention that its teaming agreement entitled its proposal to receive credit in the evaluation for the collective past performance of its team members, without being limited by the RFP's standard for prime contractor/subcontractor offers, is based on a misreading of FAR subpart 9.6 and the RFP. FAR § 9.601 recognizes two methods by which a contractor team arrangement is established: (1) a joint venture or partnership relationship, or (2) a prime/subcontractor relationship. The RFP here expressly specified how contractor team arrangements would be evaluated based on which FAR § 9.601 method applied. The RFP distinguished between contractor team arrangements established through prime/sub relationships and team arrangements based on joint ventures or partnerships; required an offeror to submit a teaming agreement in order to rely on its team's experience; and permitted the agency to determine the offeror's status for evaluating past performance. See RFP at 7-8. The mere submission of a teaming agreement neither determined a team's status, nor prevented the agency from classifying the team as being based on a prime/sub relationship where, as here, the protester did not clearly identify its team's desired status.

To the extent the protester asserts that the agency violated FAR subpart 9.6 by failing to recognize the protester's team arrangement and by not evaluating the team's past performance collectively, these arguments are factually incorrect. The protester's teaming agreement expressly stated that the parties were not establishing a "joint venture, partnership, or formal business entity of any kind." As a result, the agency concluded that TSI was proposing a team arrangement consisting of a prime contractor and subcontractor--the only other arrangement identified under FAR § 9.601. See AR, Tab 6, TER, at 35. Moreover, given the statement in TSI's teaming agreement that "the parties agree to work with TSI and other mutually agreeable vendors as its subcontractor," we view as reasonable the agency's determination that TSI's role was that of the prime offeror. On this record, we find the agency's determinations as to TSI's team arrangement to be unobjectionable.

Additionally, based on our conclusions above, we find the agency's evaluation of past performance to be reasonable. As the prime offeror in a prime contractor/subcontractor team arrangement, TSI was required, by the express terms of the RFP, to have completed 50 percent of the projects the team presented for consideration. RFP at 7-8. There is no dispute that TSI completed only one of the four projects it identified in its proposal. Accordingly, the proposal failed to conform to the RFP requirements, and the agency reasonably assessed an unacceptable rating for past performance.

The protester also argues that the pre-award schedule under the technical factor did not state a start date or list May as a scheduling requirement. Protest at 7. The agency disagrees, and the record supports the agency's position. Legal Memorandum at 7; RFP Specifications, section 01 14 00 ¶ 1.3.2. The RFP

specifications required that construction occur between May 1 and August 31, 2015, whereas TSI's schedule ran from January to November 2015. See RFP Specifications, section 01 14 00 ¶ 1.3.2. Moreover, the RFP required that performance be completed within 210 days of the notice to proceed and the protester's schedule spanned nearly 290 days. See RFP at 1, 37. To the extent the protester argues that the agency misleadingly cites the specifications or that the RFP did not include the dates for performance, we find this argument to be without merit.

The protest is denied.

Susan A. Poling  
General Counsel