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**Comptroller General
of the United States**

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

Decision

Matter of: Gemmo-CCC

File: B-297447.2

Date: July 13, 2006

Reed von Maur, Esq., for the protester.
Damon A. Martin, Esq., Naval Facilities Engineering Command, for the agency.
Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of evaluation and award is denied where the record shows that the agency's source selection was reasonable and consistent with the solicitation's evaluation factors.
 2. Protest that agency should have engaged in clarifications with protester to resolve material omissions in its proposal is denied since any such exchange would have constituted discussions, not clarifications, and agency generally has no obligation to hold discussions where, as in the solicitation at issue, it put offerors on notice of its intent to make award on the basis of initial proposals.
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DECISION

Gemmo-CCC protests the award of a contract to Consortium Montservis-DeFranceschi under request for proposals (RFP) No. N33191-02-R-1063, issued by the Department of the Navy to upgrade the electrical power distribution system at Aviano Air Base, Italy. The protester contends that the evaluation of proposals was improper and that the firm should have been given an opportunity to cure a cited deficiency in its proposal regarding its omission of low voltage switchboard equipment vendor product data, and other cited weaknesses in the proposal.

We deny the protest.

The RFP, issued on June 10, 2005, contemplated the award of a fixed-price contract to the firm with the proposal determined to offer the best value to the agency considering organizational past performance, technical approach, and price; the first

two factors were of equal importance, and, combined, were equally weighted with price. RFP at 19. The RFP instructed that initial proposals were to contain the firms' best terms, since award upon initial proposals was anticipated, without conducting discussions (although the agency reserved the right to conduct discussions, if determined necessary). Id. at 13, 17.

For the evaluation of past performance, each offeror was to demonstrate its successful management of relevant and similar contracts within parameters set out in the solicitation. For the evaluation of technical approach, each offeror was to provide vendor product data sheets to demonstrate that the equipment it proposed complies with industry standards and solicitation specifications, and that it is a regularly produced design. Id. at 20. Vendor product data sheets were to be provided for seven types of proposed equipment: high voltage switchgear, low voltage switchboard, cast resin transformer, medium voltage cable, medium voltage terminator, medium voltage splice, and protective relay system. RFP amend. 3, at 2. Vendor product data sheets detailing this equipment were to describe its main characteristics, product standards, dimensions and ratings, ordering codes, warranty, and manufacturer-recommended maintenance requirements. Id.

Adjectival ratings were to be assigned to the proposals under the past performance and technical approach evaluation factors. Ratings were to range from "excellent" to "poor" (the latter rating was to be assigned where a proposal contained "major errors, omissions, significant weaknesses and/or deficiencies"). RFP at 17-18. The RFP further advised that only proposals rated at least "satisfactory" were to be considered for award; a proposal rated "marginal" or "poor" in any category, if not improved through discussions, would result in the overall technical proposal being rated "marginal" or "poor" and thus ineligible for award. Id. at 19.

Six proposals were received and evaluated. The initial award, made to Consortium Montservis-DeFranceschi on September 23, 2005, was protested by Gemmo-CCC; that protest was dismissed as academic after the agency reported that it was going to reevaluate the proposals. On March 27, 2006, Gemmo-CCC was informed that upon reevaluation, its technical proposal, cited as having a deficiency for omitting required vendor product data, was rated "poor" and deemed ineligible for award. Award was made without discussions to Consortium Montservis-DeFranceschi, the firm submitting the only technically acceptable proposal; the awardee's proposal, rated "good" overall, was found to offer a reasonable price as it was the third low price received of the six proposals and it was below the agency's cost estimate for the work. This protest followed.

Gemmo-CCC initially challenges the evaluation of its proposal as "poor" under the technical approach factor for omitting data regarding its low voltage switchboard. The protester generally argues that, contrary to the technical evaluation board's (TEB) report which cited a deficiency in the firm's proposal "because no data was provided" for the low voltage switchboard, TEB Report at 13, it did include detailed low voltage switchboard equipment data in an attachment to its proposal. Gemmo-

CCC contends the agency improperly failed to give its proposal credit for the low voltage switchboard data it provided to meet the RFP's vendor product data requirement for that equipment.

In response, the agency reports that despite the statement in the TEB report that "no data" was provided for Gemmo-CCC's low voltage switchboard, evaluator weeksheets supporting that report more accurately explain that, although the agency recognized that some vendor product data information was provided in the firm's proposal, for a limited number of low voltage switchboard components, including circuit breakers, the data was not sufficient to allow evaluation of whether Gemmo-CCC's proposed equipment met the RFP's requirements.¹ For example, the agency reports, the data did not clearly identify which manufacturer's low voltage switchboard equipment was proposed or which model and components were to be provided to perform the project requirements; the agency adds that the lack of information also precluded its evaluation of whether the proposed equipment was a regularly produced design meeting industry standards and RFP specifications, as required.

Where a protester challenges an agency's evaluation of a technical proposal, our review is limited to considering whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Knoll, Inc.; Steelcase, Inc., B-294986.3, B-294986.4, Mar. 18, 2005, 2005 CPD ¶ 63 at 3. 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. Id.; National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Our review of the record provides us no basis to find that the agency's evaluation here was unreasonable or otherwise objectionable.

As set forth above, the solicitation informed all offerors of the detailed vendor product data sheets required for evaluation of proposed equipment, and to show it is a regularly produced design. Gemmo-CCC does not dispute that its proposal was required to describe its proposed low voltage switchboard equipment by detailing main characteristics, product standards, dimensions and ratings, ordering codes, warranty, and manufacturer-recommended maintenance requirements. The

¹ The record contains affidavits from a TEB member as well as the source selection authority (SSA) affirming that, despite the TEB report stating that no data was submitted, both the TEB and SSA considered the limited vendor product data in the Gemmo-CCC proposal regarding the low voltage switchboard, but found it materially insufficient and, consequently, assessed the proposal as "poor."

protester, however, does not demonstrate in any persuasive way that its proposal contains all of this required data. Rather, the firm only generally states that it attached several vendor product data sheets to an electronic file of its proposal which was labeled as relating to low voltage switchboard equipment. Our review of the data identified by the protester confirms the reasonableness of the agency's conclusion that the data does not demonstrate, for instance, which low voltage switchboard equipment models (among several included in the catalog pages and descriptive product data sheets it provided) or which of various pictured accessories the firm proposes to use to meet the RFP's requirements. Our review further confirms the reasonableness of the agency's position that while certain related components, including circuit breakers and controllers, are generally referenced in the proposal attachment cited by Gemmo-CCC, the protester has not pointed to where in that data it included, for instance, a clear identification of the actual low voltage switchboard equipment it proposes to meet the RFP's requirements, or the required information regarding proposed accessories, warranty terms, or manufacturer-recommended maintenance requirements.

It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate. See Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 5. Here, as the agency reports, the omissions in the firm's low voltage switchboard data alone justify the "poor" rating given the proposal, as those material omissions clearly precluded a meaningful evaluation of required equipment. Accordingly, given the RFP requirement that only satisfactory proposals would be eligible for award, we see no basis to question either the reasonableness of the evaluation or the removal of the protester's proposal from further consideration for award.² The fact that a protester does not agree with an agency's evaluation of its proposal does not render the evaluation unreasonable.³ See Idaho Norland Corp.,

² Given the reasonableness of the agency's assessment of the proposal as "poor" for failure to provide the required low voltage switchboard vendor product data, rendering the overall proposal "poor" and ineligible for award under the terms of the RFP, we need not discuss the remaining challenges raised by the protester regarding several other weaknesses found in the firm's proposal (e.g., regarding proposal information in other than the English language, or the protester's contention that several of its products that were found not to meet RFP specifications are functionally equivalent or meet more recent specifications than those included in the RFP).

³ Similarly, the protester's disagreement with the agency's evaluation of the awardee's past performance provides no basis to question the award here. While Gemmo-CCC challenges the agency's acceptance of the awardee's claim that a contract performed by one of its consortium members met the RFP's price threshold for relevant prior work, the record provides no basis to find the agency's actions unreasonable, since that contract amount was confirmed by the awardee's past performance reference for the contract at the time of the past performance

(continued...)

B-230598, June 6, 1988, 88-1 CPD ¶ 529 at 4.

Gemmo-CCC next asserts that in light of the protester's substantially lower price, the agency should have informed it of any omitted vendor product data and allowed the firm to cure the proposed defect. Any further opportunity for Gemmo-CCC to provide such information would not be clarifications, as the protester suggests, but rather would constitute discussions, since it would involve submission of information necessary to make the proposal acceptable. Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 8. There is generally no obligation that a contracting agency conduct discussions where, as here, the RFP specifically instructed offerors of the agency's intent to award a contract on the basis of initial proposals without conducting discussions. See Colmek Sys. Eng'g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. Contrary to the protester's assertion that the agency was required to hold discussions before making award in light of the protester's lower price, an agency is not precluded from awarding on the basis of initial proposals basis merely because an unacceptable lower-priced offer might be made acceptable through discussions. See Integration Techs. Group, Inc., B-274288.5, June 13, 1997, 97-1 CPD ¶ 214 at 6. Further, a contracting officer's discretion in deciding not to hold discussions is quite broad, and our Office will review the exercise of that discretion only to ensure that it was reasonable based on the particular circumstances of the procurement. Id. Here, Gemmo has provided no basis, nor have we found one in the record, to call into question the agency's decision not to engage in discussions.⁴

The protest is denied.

Gary L. Kepplinger
General Counsel

(...continued)

evaluation, and, we note, again during the pendency of this protest. The protester provides no persuasive basis for its allegation of improper agency action in this regard.

⁴ To the extent the protester contends that the agency's request prior to the re-evaluation for updated past performance reference contact information constituted discussions requiring the agency to have also informed the protester of its low voltage switchboard data deficiency, the argument is not only untimely (as it was first raised in the firm's comments months after it should have known the basis for the contention), see Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2006), but, as the agency points out, the informational inquiry did not constitute discussions. See Exploration Prods., B-279251.2, B-279251.3, June 1, 1998, 98-2 CPD ¶ 15 at 9 n.6.