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**Comptroller General
of the United States**

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

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Decision

Matter of: Tetra Tech Tesoro, Inc.

File: B-403797

Date: December 14, 2010

Neil S. Lowenstein, Esq., Daniel R. Weckstein, Esq., Katharina K. Brekke Powers, Esq., and Gretchen M. Baker, Esq., Vandeventer Black LLP, for the protester. Ronald A. Schechter, Esq., and Caitlin K. Cloonan, Esq., Arnold & Porter LLP, for DCK North America, LLC; and L. Bruce Stout, Esq., for Hardin Construction Company LLC, the intervenors.

David L. Bell, Esq., and Sharon Taylor, Esq. Department of the Navy, for the agency. Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency improperly assessed the protester's proposal a deficiency and poor rating under the subcontracting plan factor is denied, where the record demonstrates that the protester's proposal was missing the subcontracting plan required by the solicitation.

DECISION

Tetra Tech Tesoro, Inc., of Virginia Beach, Virginia, protests the award of contracts to DCK North America, LLC, of Clairton, Pennsylvania; The Whiting-Turner Contracting Company, of Baltimore, Maryland; Walbridge Aldinger Company, of Detroit, Michigan; Sundt Construction, Inc., of Tempe, Arizona; and Hardin-WGI Joint Venture, of Atlanta, Georgia, by the Department of the Navy, under request for proposals (RFP) No. N40085-10-R-5306 for indefinite-delivery/indefinite-quantity (ID/IQ) construction contracts for a wide range of construction in the mid-Atlantic region. Tetra Tech challenges the evaluation of its proposal.

We deny the protest.

BACKGROUND

The Navy issued the RFP on December 2, 2009, seeking proposals for the award of approximately six ID/IQ design-build/design-bid-build construction contracts, and providing for the issuance of future task orders to complete projects under those

contracts. RFP at 4. The duration of each contract was 1 year, with four 1-year option periods, and the maximum value of all six contracts was \$750 million. Id. The procurement was conducted in accordance with Federal Acquisition Regulation (FAR) Subpart 36.3, which provides for a two-phase design-build selection procedure, under which firms that submit phase one proposals are evaluated, and, based on that evaluation, the agency selects which offerors will be invited to participate in phase two. RFP at 4, 29.

Phase one of the evaluation here consisted of the evaluation of relevant experience and past performance. RFP at 31. At the conclusion of this phase of the evaluation, Tetra Tech was 1 of 14 offerors invited to participate in phase two. The evaluation ratings from phase one were carried over to phase two and were considered in the overall selection decision. See RFP at 31.

Phase two of the evaluation consisted of the evaluation of each offeror's subcontracting plan,¹ management plan and quality control, task order execution plan, design narrative, and price. RFP at 38-42; RFP amend. 6, at 3-5. The RFP provided that each of the non-price factors was "equal in importance" to the others and, when combined, the non-price factors were "approximately equal to price."² RFP at 31.

As is relevant to the protest, for the subcontracting plan factor, the RFP requested a statement identifying the dollar value of work the offeror would perform as the prime contractor, and then the types of work and percentages that the firm planned to subcontract to large businesses and various categories of small businesses. The RFP explained that the evaluation under the subcontracting plan factor would consider the offeror's ability to meet or exceed a goal of placing 65 percent of subcontracted work with small businesses (and various targets for subcategories of small businesses), and would also take into account the offeror's past performance in subcontracting efforts. RFP at 39; RFP amend. 6, at 5. The subcontracting plan was to be submitted as part of the price proposal, but, as noted above, it was evaluated separately from price. RFP amend. 6, at 3.

¹ The subcontracting plan factor was originally referred to as the small business participation factor, but amendment 7 to the RFP changed the name of the factor to subcontracting plan. RFP amend. 7, at 24.

² The price proposal was to include the offeror's fixed price to perform a "seed project." This seed project was to construct a new single-story building, a secure storage facility, and a multi-story addition to an existing building at the Marine Corps base in Camp Lejeune, North Carolina. RFP at 4. The RFP noted that the seed project price would be evaluated for completeness and price reasonableness under the price factor. RFP 32.

The RFP provided that the Navy would use adjectival ratings of excellent, good, satisfactory, marginal, and poor to characterize each offeror's response to the evaluation factors. A rating of poor was described as follows:

Proposal/factor demonstrates a lack of understanding of requirements. Technical considerations and capabilities do not meet performance and capability standards necessary for acceptable contract performance. Proposal/factor contains major errors, omissions, significant weaknesses and/or deficiencies. The proposal/factor represents a very low probability of success with an extremely high degree of risk in meeting the Government's requirements. Proposal/factor could only improve with major revisions of proposal.

RFP at 30. The RFP informed offerors that "[a]ny proposal found to have a deficiency in meeting the stated solicitation requirements or performance objectives will be considered ineligible for award." RFP at 29.

The Navy received phase two proposals from all 14 of the firms accepted into phase two of the competition, including a proposal from Tetra Tech. After opening the proposal packages, the contract specialist noticed that Tetra Tech did not appear to have submitted a subcontracting plan with its proposal. He then inquired whether colleagues handling other evaluation tasks had that section of Tetra Tech's proposal among their materials; they did not. As explained in statements submitted to our Office by the Navy personnel involved in the procurement, no copies of a subcontracting plan section for Tetra Tech could be located. Agency Report (AR), Tab 10, Statement of Contract Specialist, at 2; Contracting Officer's Statement at 1-2.

As a result, the Navy evaluated Tetra Tech as having a deficiency and gave it the lowest rating (poor) under the subcontracting plan factor, based on the firm's "fail[ure] to address this factor at all." Specifically, the Navy cited the proposal's absence of a subcontracting plan or subcontracting percentages, as required by the RFP. Contracting Officer's Statement at 2; AR, Tab 8, Source Selection Board Evaluation Report, at 52.

The evaluation resulted in the following ratings:

	DCK	Wall-bridge	Whiting-Turner	Hardin	Sundt	Tetra Tech
Relevant Experience	Excel.	Good	Excel.	Good	Good	Good
Past Performance	Good	Excel.	Good	Good	Good	Good
Subcontracting Plan	Satisf.	Satisf.	Good	Good	Good	Poor
Management Plan Quality Control	Excel.	Excel.	Satisf.	Good	Excel.	Good
Task Order Execution Plan	Excel.	Excel.	Good	Good	Excel.	Marginal
Design Narrative	Excel.	Excel.	Satisf.	Good	Excel.	Marginal
Overall Rating	Excel.	Excel.	Good	Good	Good	Marginal
Seed Project Price	\$24.7	\$29.0	\$25.9	\$24.3	\$26.4	\$24.0

AR, Tab 13, Source Selection Authority Report, at 1.³

After considering the evaluation results, the source selection authority selected the five awardees as listed above, and from among them selected DCK to receive a task order for the seed project.

After receiving notice of the awards and a debriefing, Tetra Tech filed this protest.

DISCUSSION

Tetra Tech challenges its ratings under the subcontracting plan, task order, and design narrative factors, and its overall rating. Since Tetra Tech was evaluated as having a deficiency under the small business plan factor, which rendered its proposal ineligible under the terms of the RFP, we address that issue first.

Tetra Tech argues that it submitted a subcontracting plan, and that the plan's disappearance is the Navy's responsibility. Tetra Tech submitted sworn statements from its employees, explaining that they made multiple checks of the proposal before submitting it, to ensure that all parts of the proposal were present. Protest, exh. A, Affidavit of Proposal Manager, at 1-2; exh. B, Affidavit of Contract Administrator, at 1. Additionally, Tetra Tech maintains that a copy of the proposal retained for the firm's own files does contain the subcontracting plan, which, the protester contends, means the plan was also present in the original proposal and the

³ The evaluations of the other unsuccessful offerors have been omitted because they are immaterial to the issues in the protest. The seed project task order prices have been rounded to the nearest tenth of a million.

copies submitted to the Navy. Id. at 2. Accordingly, Tetra Tech argues that if the subcontracting plan was no longer with the proposal when the Navy began its evaluation, the Navy lost it.

In response, the Navy denies losing the subcontracting plan and asserts that Tetra Tech's proposal did not include it. The Navy has provided a statement from the contract specialist who received the proposal, delivered the technical proposal volumes to the evaluation panel, and opened the price proposal volumes. The contract specialist reports that when he opened Tetra Tech's price proposal, he found no subcontracting plan in either the original or copy provided to the agency. AR, Tab 10, Statement of Contract Specialist, at 2. The contract specialist brought Tetra Tech's technical and price proposal to the contracting officer, who verified that the subcontracting plan was not contained in either the technical or price proposals. Id. The contract specialist also checked his office, where the other offerors' subcontracting plans were located, and Tetra Tech's plan was not there. Id. The Navy argues that Tetra Tech's proposal submission did not contain a subcontracting plan, and therefore the Navy properly assigned a deficiency and rated the proposal poor under the subcontracting plan factor, which renders the proposal ineligible for award.

In its comments in response to the agency report, Tetra Tech argues that not only have its employees sworn that the plan was submitted with the proposal, the contemporaneous record acknowledges that the proposal contained a subcontracting plan section. Specifically, Tetra Tech points out that the Navy's evaluation report states that "[a]ll proposals were received on time" and were "reviewed for compliance with the RFP submission requirements." Protester's Comments at 7 (quoting AR, Tab 8, Source Selection Evaluation Report, at 4). According to the protester, this statement means that no proposal—and specifically, Tetra Tech's proposal—was missing any information.⁴ Tetra Tech also argues that the Navy's efforts to ensure that the subcontracting plan had not been mislaid actually demonstrate that the plan was lost by the Navy; that is, if the Navy had not lost Tetra Tech's subcontracting plan, it would not have needed to search for it. Protester's Comments at 7 n.6. Neither of these arguments is persuasive evidence that Tetra Tech submitted a subcontracting plan with its proposal, but that the Navy lost it.

An offeror bears the burden of submitting an adequately written proposal and it runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Beck's Spray Serv., Inc., B-299816, Aug. 9, 2007, 2007 CPD ¶ 149 at 3. Although Tetra Tech argues that the Navy lost the firm's subcontracting plan, the protester has not

⁴ We note that the same evaluation report relied on by the protester identifies Tetra Tech's proposal as failing to provide a subcontracting plan or subcontracting percentages, and "fail[ing] to address this [subcontracting plan] factor at all." AR, Tab 8, Source Selection Evaluation Report, at 52.

convincingly established that the subcontracting plan was included with the submitted proposal. Furthermore, the record demonstrates that, upon receipt of the protester's proposal, the Navy handled the proposal with appropriate care, noticed that the subcontracting plan was missing when the evaluation began, and used diligence to confirm that the plan had not been mislaid by the Navy or misfiled in the other proposal materials. Based on this record, we find reasonable the agency's conclusion that Tetra Tech had not submitted a subcontracting plan with its proposal, and the agency's assignment of a deficiency and poor rating to the proposal under the subcontracting plan factor as a result. See Nevada Real Estate Servs., Inc., B-293105, Feb. 3, 2004, 2004 CPD ¶ 36 at 4 (even though protester claimed agency had lost the missing proposal contents, proposal was reasonably found unacceptable).

In addition, Tetra Tech argues that the Navy should have informed Tetra Tech that the subcontracting plan was missing, and should have allowed the firm to submit the plan as a clarification or through discussions.

Clarifications are limited exchanges with an offeror that agencies may use to allow the firm to clarify certain aspects of its proposal or resolve minor or clerical mistakes, while discussions are undertaken with the intent of allowing the offeror to revise its proposal. FAR § 15.306(a), (d). The submission of a proposal section, omitted entirely from the initial proposal, the content of which was required for evaluation, could not have been resolved as a clarification and would have constituted discussions. Environmental Quality Mgmt., Inc., B-402247.2, Mar. 9, 2010, 2010 CPD ¶ 75 at 5. However, the Navy was not required to hold discussions simply because Tetra Tech needed to correct a material omission from its proposal. Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 4. Accordingly, the protester's argument does not provide a basis to sustain this protest.

Finally, as noted above, Tetra Tech argues that its proposal was misevaluated under other evaluation factors. However, in accordance with the RFP, the deficiency assessed to Tetra Tech's proposal for the missing subcontracting plan rendered the proposal ineligible for award. See RFP at 29. Since the protester is not in line for award given the deficiency received, the protester is not an interested party to raise its other protest challenges, and we will not consider them here. System Res. Corp., B-270241 et al., Feb. 12, 1996, 96-1 CPD ¶ 69 at 5-6.

The protest is denied.

Lynn H. Gibson
Acting General Counsel