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Decision

Matter of: Northeast MEP Services, Inc.

File: B-285963.9

Date: March 8, 2001

William A. Shook, Esq., Kelley P. Doran, Esq., and Gary J. Campbell, Esq., Preston Gates Ellis & Rouvelas Meeds, for the protester.

Jay P. Urwitz, Esq., Barry J. Hurewitz, Esq., and Aimen Mir, Esq., Hale and Dorr, for the Center for Technology Commercialization, the intervenor.

Bernard J. Roan, Esq., National Aeronautics and Space Administration, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency's exchange with the awardee in a negotiated procurement to clarify whether all costs related to certain proposed services were already included in the awardee's cost proposal did not constitute discussions, where the agency's request clarified information already present in the awardee's proposal and the awardee was not presented with an opportunity to revise its proposal.

DECISION

Northeast MEP Services, Inc. (NEMEP) protests the award of a contract to the Center for Technology Commercialization (CTC) under request for proposals (RFP) No. RFP2-37066-CDT, issued by the National Aeronautics and Space Administration (NASA) for the operation and maintenance of the Northeast Regional Technology Transfer Center (RTTC). NEMEP contends that NASA improperly conducted discussions with CTC and not NEMEP.¹

We deny the protest.

¹ NEMEP previously challenged NASA's evaluation of proposals and selection of CTC for award. We denied that protest. Northeast MEP Servs., Inc., B-285963.5 et al., Jan. 5, 2001, 2001 CPD ¶ ____.

Under its Commercial Technology Program, NASA seeks to disseminate and encourage the commercialization of the agency's technology and information. To accomplish this, NASA operates a national network of six RTTCs, each of which has responsibility for an assigned region (i.e., Northeast, Mid-Atlantic, Southeast, Midwest, Mid-Continent, and Far West). The RTTCs link with affiliated organizations (federal, state, and local entities and non-profit institutions) having similar technology transfer and industrial development objectives, and establish relations with industry and trade groups to promote and make available the transfer of technology and information.

The RFP provided for the award of multiple contracts to operate and maintain the six RTTCs. Offerors were informed that NASA intended to award a separate contract for each region. The RFP stated that award would be based upon a cost/technical tradeoff without conducting discussions. The following evaluation factors were identified: mission suitability, past performance, and cost. With respect to the cost factor, the RFP provided for a cost realism evaluation to assess the probable cost and a "level of confidence" for each proposal.

Three proposals, including those of NEMEP and CTC (the incumbent contractor), were submitted for the Northeast RTTC contract. The proposals for each region were evaluated by a regional source evaluation committee (SEC). Proposals for the Northeast RTTC were evaluated at the Goddard Space Flight Center, which administers the Northeast RTTC contract. Each member of the SEC for the Northeast region individually evaluated NEMEP's, CTC's, and the third offeror's proposals. The evaluators documented their evaluation by completing evaluation and rating forms by hand. The SEC then met to discuss their findings and arrive at a consensus judgment regarding the proposals. The consensus judgment was documented in a summary evaluation report for each offeror. NEMEP proposal for a \$[DELETED] contract was significantly lower-rated than CTC's proposal for a \$7.13 million cost-no-fee contract.

The source selection authority (SSA) was briefed as to each of the regional SECs' findings. Among other things, the Northeast region SEC informed the SSA that CTC in its technical proposal had identified certain special services to "clients" as being "fee-based services" and that there was disagreement within the SEC as to whether the government would be responsible for these fees. Agency Report, Memorandum of SEC Chair (Jan. 29, 2001), at 2. Although the SSA "indicated" that CTC would be selected for award, the SSA directed that the agency clarify whether all the costs to the government were included in CTC's cost proposal. Agency Legal Memorandum at 6.

By letter of June 8, 2000, the contracting officer stated to CTC that the firm had proposed three categories of services (standard, selected, and new and expanded services) and requested that the firm

clarify whether all of the above-listed proposed services have been included in your cost proposal. If any of these services are to be provided at additional cost to the Government, please identify them and their associated costs.

Letter from NASA to CTC (June 8, 2000). By letter of June 19, CTC responded “[y]es, all costs associated with your citations are included in our estimated costs.”

CTC’s proposal was determined to be the most advantageous to the government, and award was made to that firm. NEMEP and others protested to our Office (file numbers B-285963; B-285963.2; B-285963.3; B-285963.4). Prior to the receipt of the agency’s report on these protests, NASA informed us that it was withdrawing its selection decision for the Northeast region and would reassess the offerors’ proposals. On September 1, 2000, we dismissed the protests as academic.

The reassessment of proposals in the Northeast region resulted in some changes in the evaluation of CTC’s and NEMEP’s proposals, although CTC’s proposal remained significantly higher-rated than NEMEP’s. NASA states that discussions were not conducted with the offerors. The SSA was again briefed as to the evaluation findings in the Northeast region. The SSA accepted the SEC’s findings, again concluding that CTC’s proposal was the most advantageous to the government.

NEMEP complains that NASA improperly conducted discussions with only CTC. Specifically, NEMEP states that NASA improperly allowed CTC to modify its proposal without providing NEMEP with the same opportunity. NASA responds that its communication with CTC did not constitute negotiations but was a clarification, and that CTC was not provided with an opportunity to revise its proposal.

Clarifications are “limited exchanges” between the government and offerors that may occur when award without discussions is contemplated. FAR § 15.306(a)(1). Such exchanges may allow offerors to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a)(2). Discussions, on the other hand, occur when a contracting officer indicates or discusses with each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to enhance materially the proposal's potential for award. FAR § 15.306(d)(3); Wellco Enters., Inc., B-282150, June 4, 1999, 99-1 CPD ¶ 107 at 7. If a procuring agency holds discussions with one offeror, it must hold discussions with all offerors whose proposals are in the competitive range. FAR § 15.306(d)(1); Strategic Analysis, Inc., B-270075, B-270075.4, Feb. 5, 1996, 96-1 CPD ¶ 41 at 4.

We find here that NASA’s exchange with CTC was merely a clarification of that firm’s proposal and did not constitute discussions. As indicated above, the SEC was unsure as to whether the government would be liable for additional costs (beyond

that proposed in CTC's cost proposal) for certain special services CTC offered in its technical proposal. For example, in its technical proposal, CTC noted:

Since Standard Services alone are occasionally inadequate to meet a particular client's needs, CTC has developed specific value added services based upon the unique information needs of clients served over the past eight years.

[DELETED]: The first value-added service utilized when the database search is inadequate and requires the [DELETED] staff to obtain and review other types of information sources CTC has developed this service into [DELETED]. This service is performed under a fee for service contract and is customized to meet the needs of the firm. These fees are used to expand the capabilities and services of the [Northeast] RTTC.

CTC Mission Suitability Proposal at 23. Similarly, CTC proposed under "Research Studies" that

The [DELETED] when requested by a client can also conduct in-depth research studies, which are tailored to the client's requirement. These research studies often span months or, where critical information is demanded, can be performed on a "rush" basis. Again, due to the specialization of research study, this is also a fee-based service.

Id. at 24.

We do not think that CTC's proposal was ambiguous or provided that the government would be liable for these fees for particular specialized services; rather, the proposal indicated that it is the client firms that order the specialized services that would be liable for the fees. Nevertheless, because some members of the SEC were unsure whether the "client" that would be liable for the fee could be the government, CTC was asked whether its cost proposal contained all costs related to these services for which the government would be liable. Thus, this question requested clarification of information already contained in CTC's proposal and did not provide the firm with an opportunity to revise its proposal. See MG Indus., B-283010.3, Jan. 24, 2000, 2000 CPD ¶ 17 at 8-9 (exchange between the agency and the awardee, which clarified whether the awardee's proposed pricing accepted the solicitation requirements, was not discussions where the request clarified information already present in the awardee's proposal and the awardee was not presented with an opportunity to modify its proposal); see also Dresser Indus., Inc., B-227904, Sept. 11, 1987, 87-2 CPD ¶ 237 at 3 (clarification of proposal pricing was not discussions where it merely confirmed information already in awardee's proposal). Moreover, the information obtained was not essential to determining the acceptability of CTC's proposal, which took no exception to the solicitation

requirements. See J. A. Jones/IBC Joint Venture; Black Constr. Co., B-285627, B-285627.2, Sept. 18, 2000, 2000 CPD ¶ 161 at 6. In sum, NASA's exchange with CTC was limited and not discussions.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel