



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Woods Air Traffic Control Hub
File: B-257733.2
Date: December 30, 1994

Michael J. Woods for the protester,
J. Thomas Waters, Esq., Federal Aviation Administration,
for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Determination that protester's proposal was unacceptable in the area of quality assurance was reasonable and in accordance with the solicitation where the solicitation required offerors to provide a detailed program addressing strategies for operational accident/incident prevention and demonstrating a thorough knowledge of various types of operational incidents, agency advised protester during discussions that the initial proposal did not demonstrate a thorough knowledge of operational incidents, and the revised proposal did not correct the deficiency.

DECISION

Woods Air Traffic Control Hub (WATCH) protests the rejection of its proposal submitted in response to the Federal Aviation Administration's (FAA) request for technical proposals No. DTFA01-94-B-07011 for air traffic control services. The protester contends that discussion questions were too broad and vague and did not properly advise WATCH of the agency's concerns regarding its proposal.

We deny the protest.

On April 12, 1994, the FAA issued the solicitation for firm, fixed-price contracts for labor, supervision, materials, equipment, supplies, and services necessary to operate visual flight rule level 1 control towers in four geographical areas; the solicitation provided for awards

¹Level 1 towers have generally low activity; visual flight rules require pilots to maintain their own separation from other aircraft, and controllers are generally responsible
(continued...)

to the lowest-priced, technically acceptable offeror in each of the four areas for base year services in a limited number of towers,² with four 1-year options at an expanded number of locations.

The agency issued the solicitation as a two-step procurement in accordance with Federal Acquisition Regulation (FAR) subpart 14.5. In step one, offerors submit technical proposals but do not submit prices or estimates; in step two, each firm that submitted an acceptable technical proposal in step one is invited to submit a sealed bid.

The solicitation, paragraph L.10, instructed offerors on the structure of technical proposals, which were to be divided into sections corresponding to the announced technical evaluation criteria. Volume I of the proposals was to address Technical Approach as follows:

- "Section 1. Overall management structure, including management of [air traffic controller (ATC)] services; relevant experience and ability to meet program objectives; subcontracting plan. (RFP paragraphs L.10.4.1.1 to L.10.4.1.3)
- Section 2. Facility training program and knowledge of documents, directives and regulations. (RFP paragraph L.10.4.2)
- Section 3. Quality assurance program and knowledge of operational accidents/incidents. (RFP paragraph L.10.4.3)
- Section 4. Drug testing program and reporting methods. (RFP paragraph L.10.4.4)

¹(...continued)

only for air traffic within 5 miles of the tower. They are not equipped with radar. Area one included 13 states, the eastern seaboard from Maine to Virginia as well as New Hampshire, Vermont, and West Virginia; area two, 13 states including the southeast, Arkansas, Texas, Oklahoma, and New Mexico as well as the Virgin Islands and Puerto Rico; area three, 12 states of the Northwest, Missouri, and the Dakotas; area four, the Pacific coast states east to Utah, Colorado, and Wyoming, as well as Guam.

²Area 1 included 6 airports in the base year and 28 in the option years; area 2, 8 in the base year and 47 in the option years; area 3, 4 in the base year and 37 in the option years; area 4, 6 in the base year and 37 in the option years. The solicitation advised offerors, however, that the agency would add roughly one-third of the optional sites in each of the first 3 option years, so that contractors would assume responsibility for 24 airports in the base year, increasing to a total of 149 airports in the 3rd option year. The agency had not determined the order in which the 125 additional sites would be added.

Section 5. Alcohol misuse prevention program and reporting methods. (RFP paragraph L.10.4.5)
Section 6. Phase-in plan for assumption of ATC services and phase-out plan for transfers of responsibility. (RFP paragraph L.10.4.6)."

(Volume II was to address Facility Staffing, including site supervision, staffing and site-specific plans; as noted below, the content and evaluation of these plans are not a factor in this protest.) The solicitation required offerors to demonstrate, in their technical proposals, comprehension of the requirements, substantiation of approach, and compliance with requirements.

The agency received 15 proposals by the May 24 due date; the evaluators found only three offers acceptable, and the agency so notified offerors on June 16. On June 27, one of the offerors found unacceptable, Midwest Air Traffic Control Service, Inc. (MATC), protested the rejection of its proposal to our Office. The agency subsequently rescinded its determination to reject the unacceptable offers and conducted discussions with the offerors; these discussions were generally limited to the deficiencies noted in volume I of the proposals, although the agency did provide offerors with a generic discussion of "common deficiencies" found in the volume II proposals as a whole, with a view to postponing discussion of specific volume II deficiencies until offerors had corrected any deficiencies noted in volume I of their proposals.

Agency officials met with the protester on July 15 and provided a list of 21 deficiencies covering five areas of the initial proposal that the evaluators considered unacceptable (only section 5, the alcohol misuse prevention program, was initially evaluated as acceptable). WATCH and 10 other offerors submitted revised proposals on July 29. On August 9, the agency advised WATCH that although the drug testing plan was deemed acceptable, its proposal remained unacceptable in the areas of management, training, quality assurance, and phase-in/phase-out plan. This protest followed:

WATCH asserts that the discussions as a whole consisted of a series of broad and vague questions, with stringent page limitations on the opportunity to answer. While during discussions the agency essentially indicated that the questions constituted a "road map"--a series of questions that WATCH need only answer briefly in order to qualify for

³WATCH filed its protest with our Office on August 22. The agency opened bids on August 31, and awarded contracts on September 15 to Robinson Van-Vuren Associates, for areas 1 and 2, to MATC, for area 3, and to Johnson-Barton, Inc., for area 4. WATCH's offer was for area 2 only.

award--WATCH argues that the questions did not in fact reveal the agency's rather specific concerns but instead misled the protester into enhancing areas of its proposal that were not in fact deficient. The protester contends that the agency's failure to identify its actual concerns unfairly restricted WATCH's ability to participate in the competition and to qualify its proposal for award.

Our review of the record shows that in the area of quality assurance, for example, the instructions to offerors required a "detailed quality assurance program" in accordance with paragraph C.4.8 of the statement of work, i.e., in accordance with FAA Orders 7210.3 and 7010.1, including provisions for full facility evaluations and response to corrective action identified during facility, follow-up, or in-flight/preflight evaluations. Offerors were advised that the program should address strategies for operational accident/incident prevention and education and that the offeror would have to demonstrate a thorough knowledge of various types of operational incidents.

The protester's initial proposal for the quality assurance program echoed the requirements of paragraph C.4.8 and generally acknowledged the information called for by paragraph L.10.4.3 of the solicitation, but did not actually discuss operational incidents, their prevention and related education, or the types of incidents that might occur, including the appropriate response. The evaluators generally found that the proposal lacked detail and did not demonstrate an understanding of operational incidents, much less present a strategy for their prevention.

Accordingly, during discussions, the agency advised WATCH specifically that its proposal "did not demonstrate a thorough knowledge of various types of operational incidents; requirements were restated." The agency also advised WATCH that while its proposal to keep existing programs in place was generally a good approach, it failed to provide for newer locations, which would have nothing in place by the time a contractor assumed operations.

A review of WATCH's response shows that the protester generally lumped the two discussion areas together, concentrating on review of existing plans and the implementation of plans at new locations. Beyond a brief reference to accident/incident reporting (proposing a quarterly oral exam on reporting procedures), the protester made no effort to address the types of operational incidents listed in FAA Order 7210.3 such as pilot deviation, operational errors, near midair collisions, vehicle and pedestrian deviations, and written complaints, or the type of response, report, and/or corrective action appropriate for each. Thus, insofar as WATCH contends that it responded to the discussion question and provided what the solicitation required, the record shows that the protester

is simply incorrect. Both the discussion question and the solicitation expressly asked for the offeror to discuss operational accidents/incidents; the protester failed to do so.

The protester contends that the quality plan submitted by WATCH mirrors one used at an existing FAA facility, that it responds to the agency's question and the statement of work, and that it was unreasonable for the FAA to reject a plan that is being used successfully elsewhere. WATCH has provided no details on where and how the plan was implemented, whether the requirements were similar, or even whether the plan it cites is being used by a contractor or the agency. Further, we fail to see how copying another facility's plan would demonstrate WATCH's comprehension of the requirement, which was the basis of evaluation under the solicitation.

In sum, the record shows that the requirement to address the various types of operational incidents was spelled out in the statement of work; the protester's initial proposal failed to address it; the agency brought this omission to the protester's attention; and the protester nevertheless failed to correct the deficiency. The agency therefore concluded, reasonably and in accordance with the solicitation, that the protester's proposed quality assurance plan was unacceptable.

The protester generally challenges the agency's evaluation and its conclusion that the proposal was deficient in the areas of management, training, and phase-in. Since, however, the protester's failure to address the express solicitation requirements and discussion question regarding operational accidents/incidents provided a valid basis for rejecting its proposal as unacceptable, we need not address the question of whether the agency properly found the protester's proposal unacceptable in other areas.

Environmental Technologies Group, Inc., 69 Comp. Gen. 193 (1990), 90-1 CPD ¶ 101.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel