

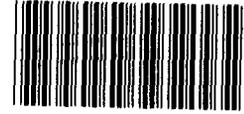
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140795



Comptroller General
of the United States

Washington, D.C. 20548

Decision



140779

Matter of: Abt Associates Inc.

File: B-237060.2

Date: February 26, 1990

Craig G. Coelen, for the protester.
Robert C. Granger, for Manpower Demonstration Research Corporation, an interested party.
James Trickett, Department of Health & Human Services, 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

1. Procuring agency properly determined that the protester's initial proposal was unacceptable and not in the competitive range where the request for proposals sought the evaluation of specific selected state Job Opportunities and Basic Skills programs and the protester offered to perform a generalized nationally representative survey based upon a random sample.
2. Procuring agency need not include the protester's unacceptable initial proposal in the competitive range where major revisions would be required to make the proposal acceptable.
3. Protest that agency did not invite the protester to a research workshop, which concerned the methods of evaluating the Family Support Act and Job Opportunities and Basic Skills programs, is untimely where the protester had known about the conference since the issuance of the solicitation and only protested this matter after the exclusion of its proposal from the competitive range.

DECISION

Abt Associates Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP)

047919/140795

No. RFP-26-89-HHS-OS, issued by the Department of Health & Human Services (HHS) for the study of the Job Opportunities and Basic Skills (JOBS) program. Abt also protests that HHS conducted a pre-solicitation conference to which Abt was not invited.

We deny the protest in part and dismiss it in part.

The Family Support Act of 1988, Pub. L. No. 100-485, § 201, 102 Stat. 2343, 2356 (to be codified at 42 U.S.C. § 602), established the JOBS program which is a new education, training, and employment program for recipients of aid to families with dependent children (AFDC) payments. The purpose of this new program is to assure that needy families with children obtain the necessary support to help them avoid long-term welfare dependence. 102 Stat. 2360, at § 481. The Act requires each state which participates in the federal AFDC program to have a JOBS program. While each state is given considerable flexibility in designing a JOBS program, it must offer educational activities (including high school or equivalent education), job skills training, job readiness activities, and job development and placement. 102 Stat. 2360-63, at § 482. The Act also requires HHS to conduct a study to assess the effectiveness of the state's JOBS programs. 102 Stat. 2379, at § 487.

The RFP issued on June 23, 1989, contemplated the award of a cost-plus-fixed-fee contract for the necessary services to assess the impact and cost of selected JOBS programs on AFDC recipients. The RFP contained a detailed statement of work which specified a variety of tasks that the contractor would be required to perform, including process evaluations, recipient impact analysis, and cost-effectiveness analysis of the JOBS program at selected sites.

The RFP stated that award would be made to the responsible offeror whose offer conforming to the solicitation would be most advantageous to the government. Offerors were also informed that the technical evaluation would be of greater importance than the cost evaluation. The RFP stated the following weighted evaluation criteria:

- | | |
|----------------------------|----|
| 1. Technical understanding | 10 |
| 2. Technical approach | 45 |
| 3. Staff capabilities | 25 |

4. Management plan	10
5. Corporate experience	<u>10</u>
TOTAL	100

HHS received three proposals by the August 7, 1989, closing date. After evaluation of initial proposals, the agency determined that the proposals of two offers were technically acceptable but that Abt's proposal was technically unacceptable. HHS found that while Abt was a good firm with strong corporate and staff capabilities, Abt's technical approach to accomplishing the solicitation requirements was flawed and evidenced a lack of understanding of the purposes and objectives of the JOBS program study. Specifically, HHS determined that Abt had proposed a nationally, generalized representative study approach rather than an approach which focused on selected state JOBS welfare-to-work programs as contemplated by the RFP.^{1/} HHS concluded that Abt's proposal was not susceptible of being made acceptable without major revisions and accordingly excluded Abt from the competitive range.

Upon learning of its exclusion from the competitive range, Abt initially protested on September 22 to our Office, but withdrew its protest to file an agency-level protest with HHS. On October 17, within 10 working days of its rejection of the denial of its agency-level protest, Abt filed this protest with our Office.

Abt protests that HHS failed to properly evaluate its proposal since the technical weaknesses identified by HHS were not related to the RFP evaluation criteria and that Abt should have been included in the competitive range since it could have addressed HHS' concerns without "completely rewriting" its proposal.

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity,

^{1/} A "nationally generalized study," in the context of the RFP requirements, is a study in which research results from randomly assigned sites can be, by the nature of the research methods, used, extrapolated or projected on a national basis.

since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Rainbow Technology, Inc., B-232589.2, Jan. 24, 1989, 89-1 CPD ¶ 66. In reviewing an agency's evaluation, we will not reevaluate the technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP criteria. Id.

HHS, in its report on this protest, has identified numerous technical weaknesses in Abt's proposal which it states resulted in Abt being found outside the competitive range. However, the record shows that Abt's proposal was found technically unacceptable primarily because Abt had proposed a generalized study approach rather than an approach that focused on selected state programs.

Abt admits that it proposed a generalized study of the JOBS program but argues that such an approach is not prohibited by the RFP. Specifically, Abt contends that the RFP did not state that "a generalized study was undesirable" and that the RFP is ambiguous and misleading with regard to whether a generalized study was desired.

We do not agree that the solicitation is ambiguous or misleading on this point. The very nature of the study sought by the RFP is an evaluation of the effectiveness of selected state JOBS programs and not a generalization of a nationally representative sample. The RFP statement of work repeatedly emphasized that it sought a study of the impact of "selected" JOBS programs. For example, under the heading "Purpose of the Evaluation," the RFP stated that "[t]he study is to describe and evaluate the impact and cost of selected JOBS welfare-to-work programs on recipients of [AFDC] and their children." Also, under the heading "Process Evaluation," the RFP states that "this evaluation will focus on JOBS programs that are comprehensive in scope, already operating, and relatively mature, rather than programs that are making major changes during the early stages of implementing JOBS." Furthermore, the Family Support Act, which was attached to the RFP, indicates that the study mandated by Congress should be site specific. The Act states in pertinent part:

"[HHS] shall conduct a study in accordance with this paragraph to determine the relative effectiveness of the different approaches for assisting long-term and potentially long-term recipients developed by States [under the JOBS program]." [Emphasis supplied.]

Abt argues that attached to the RFP was the discussion draft for an April 14, 1989, workshop on evaluating the Family Support Act which indicates that a generalized study of the JOBS program was desirable. However, the cover page of this document states: "IMPORTANT NOTE: Since this paper was written, the Government's thinking has changed. The scope and purpose of the JOBS evaluation is reflected in the RFP, not this document." We think that, in the context of the RFP statement of work and the requirements of the Family Support Act, it is clear that the RFP sought an effectiveness study of selected, mature state programs and not a national view of the JOBS program.

In this regard, HHS states that Abt is presently conducting a national evaluation of the Food Stamp Employment and Training Program using randomly selected sites, which is the same approach that Abt proposed in response to the RFP. However, unlike the JOBS program, the Food Stamp program is a more uniform program, using interventions that have been tested over the last decade. HHS states that Abt's approach would not be appropriate to JOBS, which is a more diverse program, whose treatments and approaches are more innovative and require more local site testing. We think that it should have been clear to Abt that this document was provided as background material to the RFP and not to amend or contradict the requirements of the RFP.

Abt further argues that the solicitation requires the contractor under the RFP to obtain clearances from the Office of Management and Budget (OMB) of its survey plans and data collection forms. Abt contends that since OMB's official policy is to disapprove any collection of information "that is not designed to produce results that can be generalized to the universe of study," see 5 C.F.R. § 1320.6(g) (1989), this would indicate that the RFP contemplated a generalized study.

We agree with HHS that the "universe of study" sought by the RFP is the specific treatment approaches of particular sites and not JOBS programs throughout the United States, and thus find that the RFP requirement that the contractor obtain OMB clearance of the proposed survey plan did not imply that the RFP study be generalized to the nation as a whole.

Based on our review, we find a generalized study is not what the RFP sought or what HHS was required to perform by the Family Support Act. Thus, we conclude that the services Abt offered to perform (a national review) is fundamentally different from what the RFP sought (an evaluation of specific JOBS programs) and evidenced a basic lack of understanding of the agency's requirements. Accordingly, we

find that HHS properly determined that Abt's proposal, which offered to perform a generalized study, was technically unacceptable.

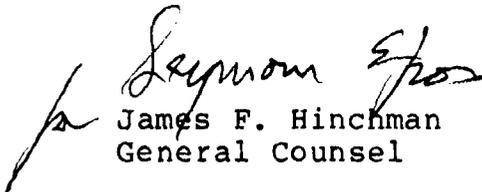
Abt also argues that the revision of its proposal would not have required a complete rewrite and, therefore, its proposal should have been included in the competitive range, and its proposal deficiencies identified during discussions. We do not agree. A procuring agency is not required to include an offeror's technically unacceptable initial proposal in the competitive range and permit revisions where the deficiencies are so material that major revisions would be required to make the proposal acceptable. See S.T. Research Corp., B-232264, Nov. 3, 1988, 88-2 CPD ¶ 435. Here, Abt admits that "revising what is covered in 25 pages of its proposal is not a minor revision. . . ." Furthermore, the study Abt has proposed to conduct is so fundamentally different from what is sought by the RFP that we find that a major revision of Abt's proposal would have been required to make it acceptable. Under the circumstances, we conclude that HHS acted reasonably in excluding Abt from the competitive range.

Abt also protests that HHS failed to invite Abt to the April 14, 1989, workshop on evaluating the Family Support Act, which was conducted by the Institute for Research on Poverty at the University of Wisconsin. Abt contends that this workshop, which a representative of one of its competitors attended, is a pre-solicitation conference and that HHS, by failing to invite Abt, had unfairly provided Abt's competitor with procurement information not available to Abt. HHS contends that the workshop, which was conducted prior to the definitization of the RFP requirements, was not a pre-solicitation conference but a research workshop which was attended by government officials, academicians and other experts in the field. HHS states that planning for the workshop began immediately after the passage of the Family Support Act and was intended to provide HHS with guidance on how to satisfy HHS' study requirement under the Act.

HHS argues that Abt's protest of its exclusion from the conference is untimely since Abt had known about the conference since the June 23 issuance of the RFP and did not protest this matter until after its exclusion from the competitive range. Abt argues that it did not know the basis of this protest issue until it had learned that its competitor had attended the workshop.

We find that Abt's protest on this issue is untimely. Our Bid Protest Regulations require protests to be filed within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). The record is clear that Abt knew of this workshop but did not pursue information, concerning the workshop conducted more than 5 months earlier, until its proposal had been excluded from the competitive range. In this regard, a key member of Abt's subcontract team attended the workshop. Under the circumstances, we do not think that Abt has satisfied its obligation to diligently pursue the information that forms the basis of this protest, and therefore it is untimely and will not be considered here. See Space Applications Corp., B-233143.3, Sept. 21, 1989, 89-2 CPD ¶ 255. In any event, it is speculative whether this conference, some 3 months prior to when the solicitation was planned and issued, would have affected Abt's approach.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel