



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Atlantic Coast Contracting, Inc.

File: B-270491; B-270590

Date: March 13, 1996

Ronald Draughon for the protester.

Nicholas P. Retson, Esq., and Bryant S. Banes, Esq., Department of the Army, for the agency.

Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably decided not to attribute a proposed key employee's experience to the protester for purposes of a hospital housekeeping solicitation's contractor-experience requirement where the requirement was designed to ensure that the offeror's performance of the services in healthcare/patient care environments demonstrated compliance with federal regulations and hospital accreditation requirements.
 2. Where agency reasonably excluded the protester's proposal from the competitive range as technically unacceptable and thus ineligible for award, it is irrelevant that agency did not address the protester's proposed price during discussions.
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DECISION

Atlantic Coast Contracting (ACC) protests its exclusion from the competitive ranges established in two Department of the Army procurements for hospital housekeeping services, one for services at Reynolds Army Community Hospital, Fort Sill, Oklahoma, and the other for services at Weed Army Community Hospital, Fort Irwin, California (request for proposals (RFP) nos. DADA10-95-R-0032 and -0040, respectively). ACC principally contends that the Army in each case improperly failed to attribute the experience of ACC's proposed Executive Housekeeper, who would be the key person under each contract, to the company for purposes of meeting the RFP's contractor-experience requirement.

We deny the protests.

The Fort Sill RFP required that the contractor have "experience in providing housekeeping services in healthcare/patient care environments (e.g. clinical, laboratory, etc. settings)"; the Fort Irwin RFP requirement was almost the same.

The minimum level of acceptable experience required by each RFP was 24 months within the previous 36 months from the initial proposal due date. Each RFP also required the contractor to provide a contract manager, called an "Executive Housekeeper," who would be responsible for the performance of the work. The minimum requirement for the Executive Housekeeper was at least 1 year of experience as a hospital Executive Housekeeper or at least 2 years of experience as an assistant Executive Housekeeper within the last 3 years.

The Army excluded ACC's proposals from the competitive ranges established in the procurements in part because the company did not meet the contractor-experience requirement. ACC, conceding that it does not, as a company, have 24 months experience within the previous 36 months, argues that the Army in each procurement should have accepted the company's proposed Executive Housekeeper as fulfilling the contractor-experience requirement. ACC points out that because it is a relatively new business the only way it can meet the contractor-experience requirement is through the proposed Executive Housekeeper's experience, unless the Army were to accept for purposes of the requirement ACC's experience in providing hospital food services.

We find nothing unreasonable in the Army's decision that ACC does not meet the contractor-experience requirement, which, the record shows, led to a low score for ACC for technical experience under each RFP's technical approach evaluation factor.¹

We considered essentially the same contractor-experience requirement in our decision in Industrial Maintenance Servs., Inc., B-261671 et al., Oct. 3, 1995, 95-2 CPD ¶ 157, which concerned three other Army procurements of hospital housekeeping services. The Army there reported that the requirement that offerors have performed housekeeping services in a healthcare or patient care environment for 2 years within the past 3 years was needed to provide reasonable assurance that prospective contractors performing cleaning services in the hospitals had demonstrated experience in maintaining aseptic conditions in compliance with Occupational Safety and Health Administration (OSHA) regulations implemented 3 years earlier. The OSHA regulations require employers to establish procedures to protect employees who stand a reasonable risk of occupational exposure to blood and infectious materials, and to protect employees against hazardous chemicals in the workplace. The Army further reported that the recent experience requirement

¹The RFPs listed five evaluation factors: technical approach, management plan, quality control, past performance, and cost/price. The first three evaluation factors comprised the technical proposal, and are listed in descending order of importance; the fourth was approximately half as important as the first two combined. Technical considerations were to be more important than price.

was needed to show that the contractor had an effective track record performing housekeeping services, consistent with the requirements established in 1995 by the Joint Commission on Accreditation of Hospitals, since failure to perform in accordance with these requirements could result in costly fines, citations, and loss of hospital accreditation. We concluded that the requirement was a reasonable means of assuring compliance with the regulations concerning the safety and welfare of hospital personnel and patients.

The issue in Industrial Maintenance concerned the inclusion of the contractor-experience requirement in the first instance, as opposed to the actual application of the requirement in a technical evaluation, which is the issue in the instant case. Nevertheless, as the Army points out, the contractor-experience requirement in the two RFPs in issue here is driven by the same justification as it was in Industrial Maintenance. The record indicates that individuals who perform housekeeping duties, particularly in patient care and laboratory areas, clean blood spills and handle regulated waste, and are potentially at risk of occupational exposure to bloodborne pathogens and hazardous chemicals. In our view, it is entirely consistent with the contractor-experience requirement, its justification, and our decision in the cited case for the Army to conclude here that the requirement is not met by either ACC's food service experience or the fact that the Executive Housekeeper ACC proposed may have had 24 months of the necessary experience within the previous 36 months. In this last respect, although our Office has recognized that an agency properly may consider the experience of supervisory personnel in evaluating the experience of a new business, see Technical Resources, Inc., B-253506, Sept. 16, 1993, 93-2 CPD ¶ 176, an agency certainly is not compelled to attribute personnel experience to the contractor especially where, as here, that would thwart the purpose of a company-experience requirement.

As we stated in Industrial Maintenance with regard to solicitation provisions relating to human safety, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results, but the highest possible reliability and effectiveness. Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79, aff'd, B-250389.2, June 21, 1993, 93-1 CPD ¶ 472. Moreover, in reviewing a challenge to an agency's technical evaluation, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. The fact that a protester does not agree with an evaluation does not mean the evaluation was unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

ACC also complains that the Army, in conducting discussions with the company, never addressed ACC's proposed prices. The record, however, shows that ACC's technical proposals were unsatisfactory, and the deficiencies were not cured after discussions. (The Army did not reject the offers based only on the company-experience deficiency, but rather on their overall technical deficiencies.) Since we

have no basis to object to the Army's technical evaluations, which eliminated ACC from the competitive range and thus from the possibility of receiving the award, see Federal Acquisition Regulation § 15.610, ACC was not prejudiced in the competition even if it in fact did not receive a full opportunity to address its prices during discussions. See Aid Maintenance Co., Inc.; TEAM Inc., B-255552; B-255552.2, Mar. 9, 1994, 94-1 CPD ¶ 188.

The protests are denied.

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