



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Atlantic Coast Contracting, Inc.

File: B-270645.2

Date: May 24, 1996

Ronald Draughon for the protester.

William R. Purdy, Esq., Ott & Purdy, for American Service Contractors, L.P., an intervenor.

Nicholas P. Retson, Esq., and Michael J. O'Farrell, Jr., Esq., Department of the Army, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly excluded proposal from competitive range which had no reasonable chance of receiving award because it contained significant technical weaknesses and was scored substantially below the higher-rated competitive range proposals.

DECISION

Atlantic Coast Contracting, Inc. (ACCI) protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. DAKF29-94-R-0010, issued by the Department of the Army for full food services at Fort Dix, New Jersey. ACCI contends that the agency's evaluation of its proposal was flawed and that its proposal should have been included in the competitive range.

We deny the protest.

The solicitation is for the provision of full food service and dining facility attendant service at various Fort Dix dining facilities. Proposals were to include: a general management summary; information on organization and staffing; evidence of the offeror's past experience in food service and related support service; a detailed phase-in plan; detailed quality control plan; and a complete cost proposal addressing cost realism and other factors. The RFP contemplated award of cost-plus-award-fee contract for a base period with 4 option years.

Section M advised offerors of the following technical evaluation subfactors, listed in descending order of importance: organization and staffing (considerably more important than any other subfactor); quality control and general management (of

approximately equal importance); and phase-in (considerably less important). Cost was to be evaluated on the basis of realism and most probable cost (MPC). The technical factor was identified as most important and slightly more important than cost. Award was to be made to the responsible offeror whose proposal was evaluated as most advantageous to the government.

Fifteen offerors including ACCI and American Service Contractors, L.P. (ASC) submitted proposals by the December 14, 1994, closing date for receipt of proposals. In late January 1995, the agency conducted a pre-award survey of ACCI. The agency conducted a technical, cost realism, and most probable cost evaluation on each proposal in April 1995. ASC's proposal received the highest score (725 points out of a possible 1,000 points). ACCI's proposal received the sixth highest score (260 points). Eleven of the offerors' proposals, including ACCI's, were rated "unsatisfactory" in at least three of the four evaluation subfactors and all were rated "unsatisfactory" on the most important subfactor, organization and staffing. The contracting officer determined that these 11 proposals failed to demonstrate an adequate understanding of the government's requirements. She found that the likelihood of failure was high and that only extensive discussions and proposal revisions could overcome the probability of failure. Accordingly, on September 13, the contracting officer determined that these 11 proposals did not have a reasonable chance of award and eliminated them from the competitive range. The agency notified ACCI of its elimination by letter dated November 20.¹ ACCI filed a protest with our Office, which we dismissed as premature on December 8. After receiving a debriefing in February 1996, ACCI filed this protest.²

ACCI contends that the agency's evaluation was flawed because ACCI's proposal was technically acceptable as submitted. We find ACCI's contentions without merit.

The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method of meeting them. Advanced Sys. Technology, Inc.; Eng'g and Professional

¹During the lengthy evaluation period, the agency asked ACCI to extend its offer on several occasions, the latest on September 25. The protester complains that it had to extend its offer after the agency had decided to eliminate its proposal from the competitive range, but before notifying it of the elimination. We fail to see how this meaningfully prejudiced ACCI.

²ACCI contends that its debriefing was not meaningful since it did not contain sufficient detail. The adequacy of the debriefing, however, has no relevance to the propriety of the evaluation of the protester's proposal, the only substantive issue raised by this protest.

Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. Thus, it is not the function of our Office to evaluate proposals de novo and we will not disturb that determination absent a showing that it was unreasonable or in violation of procurement laws or regulations. Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273.

The purpose of a competitive range determination is to select those offerors with which the agency will hold written or oral discussions. Federal Acquisition Regulation § 15.609(a); Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range consists of all proposals that have a "reasonable chance" of being selected for award, usually including those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. In determining the competitive range, it is an acceptable practice to compare the evaluation scores and consider an offeror's relative standing among its competitors and to exclude a proposal that is capable of being made technically acceptable when, relative to other offers, it is determined to have no reasonable chance of being selected for award. Id.

Here, with regard to the most important subfactor, organization and staffing, the RFP required a detailed explanation, by organizational element, of the mix of skill levels and skill types proposed to meet the specifications. The proposal was also to include productive man-hour matrices to demonstrate the adequacy of the proposed hours to meet the contract requirements. In addition, the proposal was to explain in detail how the offeror intended to accomplish each job described in the performance work statement.

The evaluators found that ACCI's proposal failed to demonstrate an understanding of proper skill mix and manpower utilization. ACCI's proposal contained only four sentences in its manpower utilization section which also referred to its staffing charts. This section included a statement that personnel could move from function to function to allow them to work the maximum number of hours per day, but the proposal contained no explanation of how this was to be accomplished. In reviewing the staffing matrices, the evaluators found that they consisted of a series of daily work schedules for each facility by contract period. While these showed a variety of generally appropriate skill types and tied each type to contract functions, they did not clearly identify how many workers would be required to perform any specific function. They also found that the proposed hours per day were "woefully" inadequate to operate the individual facilities. The inadequacy of the proposed hours was verified by review of the cost proposal. The evaluators found there was no way to identify employees who may work in more than one facility or even the total number of employees.

The RFP also required the submission of a detailed quality control plan addressing how the offeror would ensure the identification and correction of deficiencies. The evaluators rated ACCI's quality control proposal "unsatisfactory" because it lacked any meaningful detail and referred to a plan elsewhere in the proposal which was to be updated and provided after contract award. The evaluators noted that the plan was obviously designed for a different and larger location, and that only one of the individuals listed in the plan was costed in the proposal. As written, the plan was incapable of meeting the Fort Dix requirements and would need a significant revision to make it acceptable.

The RFP also required a detailed phase-in plan covering mobilization of personnel, identification of key personnel, and the offeror's approach to development and dissemination of operational instructions, procedures, and control directives. This portion of ACCI's proposal also was rated "unsatisfactory." As with the quality control plan, the agency observed that ACCI used poorly edited portions of a previous proposal (Fort Bragg) and failed to address all the required actions in the Fort Dix requirement.

Overall, the evaluators found that while ACCI had an excellent understanding of dining facility attendant tasks, it failed to demonstrate an adequate understanding of how to perform full food service tasks.³ The contracting officer had no confidence that ACCI had a minimal understanding of the requirement or that there was a convincing quality control mechanism to ensure improvement in performance. While the proposed cost was the third lowest proposed and had the lowest MPC, the technical deficiencies cast doubt on the accuracy of the MPC. The contracting officer concluded that ACCI's proposed cost advantages could not overcome the unsatisfactory aspects of its technical proposal.

ACCI contends that its staffing plan was adequate and maintains that the agency simply did not read its proposal in its entirety. In ACCI's view, its organization and staffing section is extensive and detailed, and its staffing charts are clear, not contradictory. However, it provides no specific arguments regarding the agency's evaluation of its quality control and phase-in plans. Apart from arguing that its proposal does meet the RFP's requirements, ACCI does not explain how its proposal meets those requirements. ACCI simply fails to provide any meaningful rebuttal to the agency's evaluation. Rather, ACCI's arguments merely reflect its disagreement with the agency's evaluation, which does not by itself render the

³In this regard, the evaluators found that ACCI's general management proposal was "good" overall, with ratings of "excellent" on some subfactors. However, even under this factor, they found that the subcontract administration, strike and contingency plan subfactors were "unsatisfactory."

evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.⁴ From our own review, it is plain, for example, that portions of ACCI's proposal are detailed, but its staffing matrices are difficult to understand and do not appear to cover all RFP requirements. In view of ACCI's substantially lower score and the number of "unsatisfactory" areas of its proposal, the contracting officer reasonably determined to eliminate ACCI's proposal from the competitive range.

ACCI also protests that the agency gave ASC improper credit for its experience as the incumbent contractor. An incumbent's competitive advantage provides a basis for legal objection only where that advantage results from unfair action or preference by the government. An agency is not required to equalize the offerors' competitive positions. Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267. Here, there is no evidence of any unfair action or preference on behalf of ASC. In a related argument, ACCI contends that there were unspecified flaws in the evaluation system. To be timely, any challenge to the evaluation system had to be raised prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1996). ACCI's failure to protest this matter until well after that time makes this protest ground untimely.

The protest is denied.

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⁴While ACCI argues that it should have been provided with an opportunity to correct its deficiencies in discussions, it was not entitled to discussions because its proposal was properly eliminated from the competitive range. Drytech, Inc., B-246276.2, Apr. 28, 1992, 92-1 CPD ¶ 398.