



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Speedy Food Service, Inc.

File: B-274406

Date: December 9, 1996

Jacqueline Z. Nikodym, Esq., and Theodore M. Bailey, Esq., for the protester.
William T. Welch, Esq., and John R. Tolle, Esq., Barton, Mountain & Tolle, for Cantu Services, Inc., an intervenor.

Maj. Robert L. Duecaster and Col. Nicholas P. Retson, Department of the Army, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contracting agency improperly failed to conduct sufficiently specific discussions with the protester regarding its staffing is denied where the record shows that the discussion questions asked conveyed the agency's concerns about staffing which reasonably could be discerned from the protester's initial proposal, and the specific area of concern only became evident upon review of the protester's best and final offer (BAFO) and post-BAFO clarification of proposed staffing; agencies are not required to notify offerors of deficiencies remaining in their proposals or to conduct successive rounds of discussions until such deficiencies are removed.

DECISION

Speedy Food Service, Inc. protests the award of a contract to Cantu Services, Inc. under request for proposals (RFP) No. DABT39-95-R-0002, issued by the Department of the Army to obtain food services at Fort Sill, Oklahoma. Speedy argues that the Army conducted inadequate discussions with it and improperly selected the awardee's slightly higher-priced proposal.

We deny the protest.

The solicitation describes Fort Sill's requirements for food services as falling into two categories, one of which is at issue here. Management and food production (M&FP) services include the preparation and serving of food and associated administrative tasks. The solicitation accounted for those dining facilities requiring M&FP services in one contract line item (CLIN), which was divided into several sub-CLINs to account for a varying range in the average number of meals served.

Offerors were also given estimated work-load data for the services to be provided, including the headcounts for breakfast, lunch, and dinner.

Proposals would be evaluated under technical, management, and price factors, in descending order of importance. The technical factor contained five subfactors, the first and fourth most important of which were, respectively, the organization and staffing subfactor and the property administration subfactor. The nonprice factors and subfactors would be point-scored and adjectively rated. Price would not be scored, but its importance would increase, and could become the controlling factor, if differences between the offerors' technical/management scores were small or nonexistent. Award would be made to the firm whose proposal was most advantageous to the government.

The Army's source selection evaluation board (SSEB) evaluated the eight proposals submitted and included five of them in the competitive range. Discussions were conducted, best and final offers (BAFO) were submitted, and clarifications were requested and received. The final evaluation results show that Firm A received a higher overall rating than either Cantu or Speedy, but offered a higher price. Cantu was rated 85 overall, to Speedy's 84, both "excellent" ratings--Cantu received "excellent" ratings under both the technical and management factors, and Speedy received a "satisfactory" rating under the technical factor and an "excellent" rating under the management factor. Cantu's price of \$21,841,901 was slightly higher than Speedy's price of \$21,799,561.

In making his source selection decision, the contracting officer declined to follow the SSEB's recommendation to award the contract to Firm A, since he believed that the firm's advantages did not justify its additional cost. He noted Cantu's excellent ratings under both the technical and management factors and the fact that its price was lower than Firm A's price. While he recognized the SSEB's concern with Cantu's low staffing levels during the serving hours, citing an example, he determined that the levels were only slightly lower than those currently used by Cantu as the incumbent subcontractor providing these services. The contracting officer recognized that Speedy offered a lower price than Cantu, but pointed to its lower technical rating, which was primarily due to the SSEB's concern with the firm's inadequate staffing during serving time and problems with the firm's property control system. The contracting officer focused on staffing and stated that, for example, Speedy proposed about three fewer personnel than Cantu during critical meal serving times, which significantly increased the risk of nonperformance. He did not believe that the firm's lower price justified this risk. The contract was awarded to Cantu on August 23, and Speedy filed this protest after its debriefing.

Under the organization and staffing subfactor,¹ each offeror was instructed to submit a breakdown and set forth the proposed manpower requirements for its administrative staff and for each dining facility, including a recapitulation of the total requirements. Speedy's proposal complied with this requirement by, among other things, providing staffing charts for M&FP facilities. One chart listed the estimated number of employees by meal range, and the other listed the daily distribution of hours for each labor classification by meal range. Neither chart was broken down into meal serving times such as breakfast, lunch, or dinner.

The Army was concerned that Speedy had proposed several M&FP positions that were not required by the RFP. During discussions, Speedy was asked to explain the duties planned for these specifically identified positions, since the RFP did not require them. Speedy was also cautioned that without these positions, its M&FP staffing would be inadequate to meet the RFP's requirements.

In its BAFO, Speedy stated that it had deleted the requirements for the positions of concern to the agency and had redistributed some of them into other labor categories. The manning charts show a slight increase in overall staffing for some meal ranges. The SSEB concluded that Speedy's staffing was in line with the government estimate except for the most critical meal serving period (*i.e.* the period when the most meals would be served); staffing in this category was considered very low and, since this was the predominant category, it could degrade Speedy's ability to meet the RFP's requirements. In weighing the offers to arrive at his source selection decision, the contracting officer asked some offerors, including Speedy, to clarify their proposals by providing staffing levels for all hours of operation. After considering Speedy's response, the SSEB concluded that Speedy planned to use very low staffing during both high and low meal service periods, posing significant risk that the proposed approach would not meet the RFP's requirements. As noted above, the contracting officer concurred.

Speedy contends that the Army improperly failed to conduct sufficiently specific discussions with the firm. The protester argues that the Army should have specifically directed the firm to its concerns that its mealtime staffing was too low.

¹We need not address Speedy's challenges associated with the property administration subfactor since, as Speedy acknowledges, the record is clear that the firm's weaknesses there were not decisive in the contracting officer's source selection decision. Hence, even if Speedy's allegations were true, the firm was not prejudiced by any impropriety on the part of the agency. See Litton Sys., Inc., Data Sys. Div., B-262099, Nov. 17, 1995, 95-2 CPD ¶ 261. Prejudice is an essential element of a viable protest. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Health Management Resources, Inc., B-270185; B-270185.2, Jan. 25, 1996, 96-1 CPD ¶ 23. Offerors are not entitled to all-encompassing discussions, but must be led into areas of their proposals which require amplification or correction. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. Discussions should be as specific as practicable considerations will permit, Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300, but the degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. JCI Envtl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299.

Speedy's charts did not break out its staffing levels by meal time, but only provided overall staffing levels by labor classification. As a result, the Army could not have formulated specific discussion questions regarding Speedy's mealtime staffing. Speedy's initial proposal raised more basic concerns to the evaluators, which were conveyed almost verbatim to the firm in the form of discussion questions.² Further, despite the specific question indicating the agency's concern that Speedy would be understaffed if it eliminated the identified positions, Speedy's BAFO only shifted a few positions and deleted the rest, resulting in a minimal staffing increase in some meal ranges. The Army's concerns regarding Speedy's staffing were not alleviated, and those concerns became more sharply focused when Speedy submitted its clarification response breaking down its staffing by the hour. The Army was not obligated to raise its concerns about Speedy's proposed mealtime staffing at this point; agencies are not required to notify offerors of deficiencies remaining in their proposals or to conduct successive rounds of discussions until such deficiencies are removed. Rockwell Int'l Corp., supra.

Speedy's argument that the consideration of mealtime staffing levels was improper because mealtime staffing is not an RFP evaluation criterion is untimely, since it learned that the agency considered such levels when it received its debriefing, but did not raise this issue until it filed its comments on the agency report more than 10 calendar days later. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). Moreover, in performing an evaluation, an agency may take into account specific, albeit not expressly identified, matters that are logically encompassed by the stated evaluation criteria. See Cobra

²Speedy's focus on the allegedly more specific questions asked of Cantu is misplaced. Because the degree of deficiencies in proposals will vary, the amount of specificity or detail of discussions also will vary among offerors, Pope Maintenance Corp., B-206143.3, Sept. 9, 1982, 82-2 CPD ¶ 218, and there is no requirement that all offerors receive the same number or type of discussion questions. Rockwell Int'l Corp., B-261953.2; B-261953.6, Nov. 22, 1995, 96-1 CPD ¶ 34. The record shows that Cantu's proposal did break its staffing down by meal times, providing the Army with a basis to ask the questions it raised.

Technologies, Inc., B-272041; B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73. In our view, the consideration of an offeror's staffing levels at meal times is logically encompassed under the organization and staffing subfactor.

An award to an offeror with a higher technically scored proposal and a higher price is unobjectionable, so long as the result is consistent with the evaluation criteria and the agency has determined that the technical difference is sufficiently significant to outweigh the price difference. Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28. Here, the decision to select Cantu for award despite its slightly higher price turned on the fact that its staffing levels during meal times were more advantageous than Speedy's levels. The protester's view that the differences in the staffing levels are minimal is fundamentally a disagreement with the agency's view, but does not render that view unreasonable. Accordingly, we see no basis to object to the agency's selection of Cantu's slightly higher-priced but technically superior proposal.

The protest is denied.

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