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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-216504

DATE: December 4, 1984

MATTER OF: Phoenix Safety Associates, Ltd.

DIGEST:

1. In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.
2. Meaningful discussions have been held where the agency has identified those areas in a proposal which are deficient, and has afforded the offeror an opportunity to correct those deficiencies in a revised proposal. The offeror bears the burden to revise its proposal to accommodate the agency's expressed concerns.
3. In a negotiated procurement, award need not be made to the low offeror unless the RFP so specifies. In the absence of such a provision, award to the low, but technically inferior, offeror is not required.
4. GAO does not review affirmative determinations of responsibility except in limited circumstances, not present here.

Phoenix Safety Associates, Ltd. protests the award of a contract to HazTrain, Inc. under request for proposals (RFP) No. WA 84-A084, issued by the Environmental Protection Agency (EPA). The solicitation sought offers to provide a basic training course for

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EPA employees performing various field activities relative to the agency's mission. Phoenix contends that its proposal was improperly evaluated as technically inferior, and urges that it should have received the contract award because it was the low offeror. Phoenix also alleges that HazTrain may lack the capability to perform the work. We deny the protest in part and dismiss it in part.

Background

The RFP informed offerors that they were to propose a 3-day basic training course specifically tailored for EPA field activity employees performing environmental and pesticide sampling, water and waste water treatment plant inspections, and hazardous material spills and waste site investigations. The purpose of the training was to assure that these employees were aware of the hazards involved, and to provide them with the skills necessary to minimize health and safety risks to themselves and the public. The RFP's Statement of Work specified that proposed courses had to incorporate the following training areas:

- ° employee rights and responsibilities;
- ° nature of anticipated hazards;
- ° emergency help and self-rescue;
- ° vehicle rules and regulations;
- ° safe use of field equipment;
- ° use, handling, storage, and transportation of hazardous materials;
- ° use and care of personal protective equipment and clothing; and
- ° safe sampling techniques.

Offerors were advised that the technical quality of submitted proposals would be more important for award purposes than offered price.

Upon evaluation, three of the four initial proposals submitted, including Phoenix's, were determined to be either acceptable or reasonably susceptible of being made acceptable through discussions, and accordingly were included in the

competitive range. The EPA conducted written and oral discussions with Phoenix, pointing out the areas in the firm's initial proposal that the agency deemed to be technically deficient. The agency criticized the proposal principally because Phoenix had emphasized training relative to hazardous material spills and waste site investigations to the exclusion of training for other field activities such as environmental sampling and water treatment plant inspections. Specifically, the EPA objected strongly to the incorporation of a respiratory training component, involving instruction in the use of self-contained breathing devices in hazardous material situations, since this component would entail a full day of training and was not in fact a requirement for the basic level course being sought. The EPA then requested best and final offers.

Phoenix upgraded its proposal to some degree in response to the request for best and finals, but continued to propose the 1-day respiratory training component. The EPA again determined that this undue emphasis upon hazardous material activities denigrated the technical quality of the proposal with respect to satisfying other basic training needs. Although Phoenix offered the lowest price of the three firms in the competitive range, it was not selected for award, since this remaining technical deficiency caused its proposal to be scored significantly lower than HazTrain's.

Protest and Analysis

Phoenix contends that its proposal was improperly evaluated as technically inferior, and believes that it should have received the award as the low offeror. The firm contends that the RFP indicated that respiratory training would be a necessary aspect of any proposed training course, by advising offerors in the Statement of Work that proposals were to offer instruction in: (1) the use, handling, storage, and transportation of hazardous materials; and (2) the use and care of protective equipment and clothing. Phoenix asserts that it did not act beyond the scope of the solicitation in proposing a 1-day respiratory training component, since these areas comprised a significant part of the EPA's field activity training requirements. In addition, Phoenix alleges that HazTrain may lack the capability to perform the work due to insufficient staffing and experience. We find no merit in the protest.

In reviewing protests against allegedly improper evaluations, this Office will not substitute its judgment for the contracting agency's evaluators, who have wide discretion, but

rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396.

In our view, the RFP clearly advised offerors that their proposals were to accommodate the training needs of the EPA with respect to a wide variety of field activities, but not principally to hazardous material spills and waste site investigations. Phoenix chose to offer a training component that it believed to be essential, but was informed by the agency, through written and oral discussions, that such a component was not required, and that this undue emphasis caused its initial proposal to be downgraded.

Generally, discussions are to be held with all firms in the competitive range, that is, those firms whose initial proposals are determined to be either acceptable or reasonably susceptible of being made acceptable. See Gould Defense Systems, Inc., et al., B-199392.3, et al., Aug. 8, 1983, 83-2 CPD ¶ 174. Meaningful discussions have been held where the contracting agency has identified those areas in an offeror's proposal that are considered to be deficient, and has afforded the offeror the opportunity to correct those deficiencies in a revised proposal. Logistical Support Inc., et al., B-208722, et al., Aug. 12, 1983, 83-2 CPD ¶ 202.

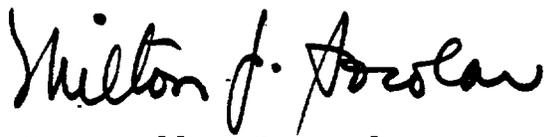
Here, the EPA fully met its obligation to conduct meaningful discussions. The burden clearly is on the offeror to furnish satisfactory responses to concerns raised by the agency when given the opportunity to revise a deficient proposal. See Control Data Corp., B-209166.2, Dec. 27, 1983, 84-1 CPD ¶ 21. Therefore, the lower technical score given to Phoenix's revised proposal is not attributable to any unreasonable or arbitrary action on the EPA's part, but rather results solely from Phoenix's failure to accommodate the agency's expressed concern about the respiratory training component.

Phoenix asserts that any technical inferiority in its proposal did not warrant the contract award to HazTrain. Phoenix points out that its proposal was still held to be adequate, and that HazTrain's price is much higher. This was a negotiated procurement, however, in which the government is not required to make award to the low offeror unless the solicitation so specifies. A.B. Dick Company, B-207194.2, Nov. 29, 1982, 82-2 CPD ¶ 478. Although Phoenix's technical proposal was deemed to be adequate, though inferior to HazTrain's, the RFP stated unambiguously that technical

quality would be more important than price for purposes of determining the awardee. On a comparative basis, Phoenix's final technical score was some 24 percent lower than HazTrain's. Where the RFP clearly indicates that technical excellence is more important than price, and the agency reasonably determines that one proposal is technically superior and will provide the greatest opportunity for value received per dollar spent, award to the low, but technically inferior, offeror is not required. Ouest Research Corporation, B-203167, Dec. 10, 1981, 81-2 CPD ¶ 456.

Phoenix believes that HazTrain may lack the capability to perform the contract work due to insufficient staffing and experience. Such an issue, however, essentially is a challenge to the EPA's determination that HazTrain is a responsible contractor. This Office will not review an agency's affirmative determination of responsibility, which is a prerequisite to any award, unless the protester alleges fraud on the part of contracting officials, or the misapplication of definitive responsibility criteria. Surgical Instrument Company of America, B-214918, May 22, 1984, 84-1 CPD ¶ 551. Phoenix has raised neither allegation here, and therefore we will not consider the matter.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States