



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Huff & Huff Service Corporation

**File:** B-235419

**Date:** July 17, 1989

## DIGEST

1. Where solicitation specifically requested that offerors submit information related to technical evaluation factors in their initial proposals, protest that meaningful discussions were not conducted because the contracting agency failed to request the submission of such information in the protester's best and final offer is denied because the agency is not required to remind offerors to submit information that is already specifically requested in the solicitation.
2. Protest that the contracting agency failed to advise the protester of deficiencies in its technical proposal is denied where the protester is not prejudiced by the agency's failure since the additional points available for the technical factor would not change the protester's competitive standing or make its proposal technically acceptable, and the protester's final price is higher than the awardee's.

## DECISION

Huff & Huff Service Corporation protests the award of a firm, fixed-price indefinite quantity contract to Esmor, Inc., under request for proposals (RFP) No. C0-1-89, issued by the Immigration and Naturalization Service (INS) for labor, materials and equipment necessary to operate and maintain temporary residential care and secured detention of detained aliens in Seattle, Washington, for a base year and four 1-year option periods. Huff & Huff contends that its proposal was unfairly evaluated because INS failed to conduct meaningful discussions with it.

We deny the protest.

The RFP required submission of technical and cost proposals; technical approach was worth 70 points and price 30 points.

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The solicitation also advised that the technical proposal should include technical and management plans which specifically and completely discuss, in detail, the contractor's resources and technical knowledge of the government's specific requirements and plans for accomplishing those requirements. The solicitation further advised that the technical proposal should include a discussion of the offeror's experience in detention services or other similar services, a description of personnel, equipment and supplies to support the contract, the company's most recent profit and loss statement, and other relevant factors that would support the proposal. Further, the RFP specifically stated that the evaluation would be based upon the completeness and thoroughness of the technical proposal which should show the offeror's understanding of the solicitation's objectives and present a logical program for the achievement of those objectives.

The specific criteria used to evaluate the offerors' technical proposals and their point values were as follows: experience, 12 points; capability, 10 points; security and control, 8 points; food services, 9 points; medical and health services, 8 points; personnel and training, 8 points; recreation program, 5 points; records and reports, 5 points; and facility maintenance, 5 points.

Two of the three proposals received by the January 13, 1989, closing date for receipt of proposals were determined to be technically acceptable: the proposal of Wackenhut Corporation, which received the maximum score of 70 points, and Esmor's proposal, which scored 67 points. Huff & Huff's proposal scored 40.5 points and was determined to be technically unacceptable but capable of being made acceptable. All three proposals were included in the competitive range.

Oral discussions were conducted based on written questions that had earlier been provided to all three offerors. Huff & Huff was provided with a list of 10 detailed questions in the areas of food services, personnel and training, records and reports, and security. Best and final offers (BAFOs) were submitted on March 7. Wackenhut and Esmor submitted BAFOs, scored at 70 and 67 points, respectively, which were determined to be technically acceptable. Huff & Huff's technical score increased from 40.5 to 48.5 points, but the firm's BAFO was rejected as technically unacceptable because the firm had shown little corporate experience in managing a detention facility, had suffered financial losses during the past 2 years and had only minimal financial resources (which the agency felt was a major component of successful performance). The agency also concluded that

Huff & Huff had only barely met the security and recreation program requirements. On April 25, INS made award to Esmor.

Huff & Huff contends that INS's failure to point out its proposal's deficiencies in the areas of experience, financial capability, and recreation was a breach of the agency's duty to engage in meaningful discussions. Specifically, the protester maintains that if it had been asked to supplement its discussion in the area of experience, the firm was prepared to submit information on its proposed manager who has substantial experience in managing and controlling detention facilities. With regard to financial capability, Huff & Huff maintains that it was unfairly downgraded in this area and that, if given the opportunity, it would have presented information on its largely profitable 20 years of operation, the reason for the losses during the prior 2 years, and its substantial profits in the first quarter of this year. With respect to recreation, Huff & Huff maintains that it was prepared to provide supplemental information, but was never informed of deficiencies in this area of consideration. The protester now requests the award of the contract and the recovery of its protest costs.

The content and extent of discussions is a matter of the contracting officer's judgment based on the particular facts of each procurement. Federal Acquisition Regulation (FAR) § 15.610(b). The contracting officer is required to advise an offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the government's requirements. FAR § 15.610(c)(2). In evaluating whether there has been sufficient disclosure of deficiencies, the focus is not on whether the agency described the deficiencies in such detail that there could be no doubt as to their identification and nature, but whether the agency imparted sufficient information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct the deficiencies in its proposal. Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. The degree of specificity necessary in the disclosure of deficiencies to meet the requirement for meaningful discussions varies with the context of individual procurements. Where certain information is specifically requested in the solicitation, an agency is not necessarily required to remind an offeror to submit that information with its final offer. Id. Further, we will not disturb the award of a contract to another offeror even where the contracting agency improperly fails to point out a deficiency to the protester during discussions in the absence of material prejudice to the protester. Checchi & Co., 56 Comp. Gen. 473 (1977), 77-1 CPD ¶ 232.

Here, INS states that discussions with Huff & Huff were adequate because they constituted a reasonable communication of specific deficiencies in the protester's proposal and therefore were meaningful. We agree.

With respect to discussions on the protester's experience, INS states that while the written questions provided to Huff & Huff did not address this area, INS orally asked Huff & Huff for more details on its experience in the detention and custody of individuals, an area in which the protester scored 7 out of 12 possible points. Huff & Huff states that the subject was not raised during oral discussions. We need not resolve this factual dispute, however, since, even assuming that INS failed to point out deficiencies in the area of experience, the protester was not prejudiced as a result because the RFP clearly advised offerors that their experience in detention and similar services should be thoroughly discussed in the technical proposal. The contracting agency is not required to remind an offeror to submit, in its final offer, information that is already specifically requested in the solicitation. See Eagan, McAllister Assocs., Inc., B-231983, supra. If, as it claims, the protester had relevant information on its proposed manager's experience in managing and controlling detention facilities, that information should have been included in the firm's initial proposal. It is unreasonable for Huff & Huff to think that information which would have been relevant in establishing that the protester had experience in managing detention facilities should only be provided if requested by INS during discussions.

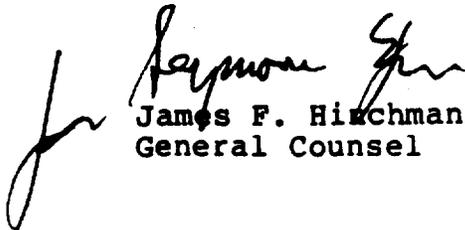
Regarding the protester's financial capability, INS states that although it noted that Huff & Huff had marginal liquid assets and substantial losses over the past 2 years, the financial aspects of the firm's capability to perform the contract were not discussed because INS believed that its proposal reflected the company's current state of affairs and was not susceptible to change through discussions. In this regard, since the solicitation specifically requested financial statements and other relevant factors that would support the proposal, information clarifying Huff & Huff's financial condition should have been initially provided by the protester to show that the firm had the capability to perform the required services. It is unreasonable for the protester to now state that INS failed to provide it with the opportunity to present this allegedly relevant financial information; that opportunity was available when the firm's initial technical proposal was submitted.

With respect to recreation, INS admits that it should have, but failed to, discuss the protester's deficiencies in this area, for which Huff & Huff received 1 out of 5 possible points. However, the agency states that this failure did not materially prejudice the protester because even if Huff & Huff had received the four additional points available in the recreation area, the firm's standing with respect to the awardee would not have changed. (As noted above, Huff & Huff scored 48.5 points, the awardee, 67 points.)

We agree that the protester should have been advised of its deficiencies in this area. However, even if INS had pointed out the deficiencies in the protester's proposed recreation program, the correction of those deficiencies would not have significantly improved Huff & Huff's technical score (with 4 additional points, the protester's score would have been 52.5 points), or changed its competitive position (the protester would still rank third technically). Huff & Huff does not argue nor is there any evidence that with a score of 52.5 points the protester's technical proposal would have been acceptable. Moreover, even if Huff & Huff's proposal had been found technically acceptable with the four additional points, the protester's standing would not have changed because its BAFO price was higher than the awardee's BAFO price. Huff & Huff therefore was not materially prejudiced by the agency's failure to discuss the deficiencies related to its proposed recreation program. Pan Am World Services, Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

We find no basis to object to the extent of the discussions INS held with Huff & Huff since the RFP specifically advised offerors to fully discuss their relevant experience and financial capability, and, with regard to the recreation category, there is no indication that even fully improving Huff & Huff's score in the category would have affected its competitive position. Since we find the protest to be without merit, there is no basis for the award of protest costs. United States Pollution Control, Inc., B-225372, Jan. 29, 1987, 87-1 CPD ¶ 96.

The protest is denied.

  
James F. Hirschman  
General Counsel