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Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** SAMCO dba Advanced Health Systems, Inc.

**File:** B-237981.3

**Date:** April 24, 1990

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John M. Taffany, Esq., Bailey & Shaw, for the protester.  
 Millard F. Pippin, Department of the Air Force, for the agency.  
 Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq.,  
 Office of the General Counsel, GAO, participated in the  
 preparation of the decision.

## DIGEST

1. Where a protester is one of the lowest technically rated offerors in the competitive range after an initial evaluation, it is nevertheless an interested party under the Bid Protest Regulations to protest the evaluation of its proposal.
2. An agency's determination that an offeror's proposal was not in the competitive range, made after it conducted one round of discussions, was proper where the proposal's technical rating was reasonably evaluated as marginal and offeror's proposed price was substantially higher than the lowest priced of those offerors retained in the competitive range.
3. Contracting agency satisfied the requirement for meaningful discussions where a letter requesting clarification and correction of deficiencies led the protester into areas of its proposal needing responses or amplification.

## DECISION

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SAMCO dba Advanced Health Systems, Inc. (AHS) protests the award of a contract to Western Medical Services under request for proposals (RFP) No. F41636-89-R-2050, issued by the Department of the Air Force for nursing services at Wilford Hall Medical Center, Lackland Air Force Base, Texas. AHS contends that the agency improperly evaluated its proposal resulting in its exclusion from the competitive range, and failed to conduct meaningful discussions.

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We deny the protest.

The RFP contemplated award of a fixed price, indefinite quantity contract for a 9-month basic period and 4 option years. The RFP listed management, personnel, and performance as the technical evaluation criteria, with the management criterion significantly more important than the personnel criterion, and the personnel criterion significantly more important than the performance criterion. The RFP advised that although price was a significant factor, the overall technical rating would be considered slightly more important.

Fifteen proposals were received by the October 27, 1989, closing date. Following an initial evaluation, 10 of the proposals, including AHS's, were included in the competitive range. Deficiency notices and clarification requests were issued, and a second evaluation was performed after the responses were received. Based on that evaluation, three offerors, including AHS, were eliminated from the competitive range. AHS was determined to be outside the competitive range based on its low (marginal) technical ranking and its high price (31 percent higher than the lowest priced acceptable offeror). Best and final offers were requested and received from the remaining firms in the competitive range. After a final technical and price evaluation, a contract was awarded to Western Medical Services on December 21. AHS, the incumbent contractor, received a written debriefing dated December 26, and protested the award to our Office on December 28.

Initially, the Air Force claims that the protest should be dismissed because AHS is not an "interested party" under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1989), because AHS was one of the lowest technically rated offerors remaining in the competitive range after the first evaluation, such that other offerors would be next in line for award even if AHS's protest were sustained. However, AHS protests that its proposal was misevaluated and contends that it could be entitled to award if a proper evaluation had been made. If we found AHS's arguments had merit, it is entirely possible that AHS would be in line for award. Consequently, we consider AHS an interested party under our Bid Protest Regulations. Pan Am World Servs., Inc., et al., B-231840, et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

AHS contests each of the deficiencies identified by the Air Force as reasons for AHS's low technical rating. AHS contends that the Air Force unreasonably evaluated its proposal because it "appears to have ignored" AHS's response

to the Air Force's November 16 letter requesting clarification and correction of deficiencies in AHS's proposal. AHS further argues that it should not have been excluded from the competitive range because the deficiencies identified by the Air Force were not of major significance and were capable of correction, and its price was not so high as to be considered outside the competitive range.

In a negotiated procurement, the competitive range consists of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through discussions. Hummer Assocs., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. However, the evaluation of proposals and the resulting determination of whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding the best method for accommodating them. American Contract Health, Inc., B-236544.2, Jan. 17, 1990, 90-1 CPD ¶ 59. In reviewing a competitive range determination, we do not evaluate technical proposals; instead, we examine the agency's evaluation to ensure that it was reasonable and in accord with the evaluation criteria. Rainbow Tech., Inc., B-232589, Jan. 24, 1989, 89-1 CPD ¶ 66. We will not disturb a competitive range determination absent a showing that it was unreasonable, arbitrary, or in violation of procurement laws or regulations. Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273.

AHS's technical proposal was rated marginal overall under the RFP technical evaluation criteria, based on a number of weaknesses in the personnel and performance areas. Although AHS argues that the Air Force must not have read its response to the Air Force's letter requesting clarification and correction of deficiencies, our review of the record shows that the Air Force did evaluate its response, but found its proposal was still deficient. Moreover, while AHS contends its proposal was acceptable, we find that the agency had a reasonable basis for its conclusion that AHS's technical proposal was only marginal.

For example, the team noted that AHS's proposed methodology for placing nurses in a specialty area did not adequately address the RFP's requirement for a "minimum of 1 year's experience within the last 3 years working as an RN in the nursing areas in which duty is to be performed." Though AHS argues it adequately addressed this weakness in its response to the Air Force's request for more documentation, we think its response can reasonably be read to convey that experience in a specialty is merely a consideration, not a

requirement, for placement in an area.<sup>1/</sup> AHS states that a 1-year requirement was an "underlying supposition" to its methodology, and notes that the 1-year requirement was also part of its predecessor contract. However, it is well established that an offeror has the burden to submit an adequately written proposal which shows compliance with RFP requirements. William B. Hackett & Assocs., Inc., B-232799, Jan. 18, 1989, 89-1 CPD ¶ 46. There is no legal basis for favoring a firm with presumptions on the basis of the offeror's prior performance. See Inter-Con Security Sys., Inc., B-235248; B-235248.2, Aug. 17, 1989, 89-2 CPD ¶ 148.

The Air Force also noted that it was unclear how AHS planned to keep the Air Force apprised of the currency of each nurse's cardiopulmonary resuscitation (CPR) certification. The RFP required that RN's be certified in CPR, and that the contractor provide current validation when CPR was recertified. AHS argues that its response to the Air Force's request for more information was sufficient because it described the individual in charge of the monitoring program and included a sample roster showing how the certifications were tracked. AHS further argues that "As the government was well aware, this procedure had been accomplished by the contractor under its previous contract . . . ." However, as noted above, there is no legal basis for favoring a firm with presumptions on the basis of the offeror's prior performance; rather, all offerors must demonstrate their capabilities in their proposals. We do not find it unreasonable for the Air Force to downgrade AHS for failing to indicate how it would inform the Air Force that all certifications were current, since the RFP required the contractor to provide current validation and AHS's answer only addressed its internal procedures for tracking expired certifications.

The Air Force also determined that AHS did not address how strictly the health certification program would be enforced, how results from immunizations would be relayed to the medical center or what was its method of verifying titer and tine test results and health examinations. Although AHS argues that there was no requirement for any of this information, RFP Section C, Part I, Paragraph 4, specifically required the contractor to provide written verification of titer and tine test results and health examinations to the contracting officer within 7 calendar days after notification of award, and to provide current validation when tuberculosis tine test or rubella,

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<sup>1/</sup> We have limited our discussion of AHS's response since AHS labeled its response as confidential and privileged.

rubeola titer is updated. Furthermore, the RFP specifically required that the offeror describe in its technical proposal the methods it used to insure that staff met the health certification, including the immunization and health status exams stated in Section C, Statement of Work. Since AHS did not adequately identify its verification method in its proposal, the agency mentions that a doctor signature verification could be used by AHS in the future to improve its technical proposal.

The Air Force also noted that AHS did not identify topics of in-house training or who would attend. Since the RFP specifically required offerors to identify, describe and indicate the frequency of training and in-service programs provided to RNS, we do not find it unreasonable for the Air Force to downgrade AHS's proposal, which specifically identified only one neonatal course and which did not identify topics of in-service programs for which it stated it had begun preliminary coordination with nursing schools.

In rating AHS under the third evaluation factor of performance, the Air Force judged AHS's performance on its incumbent contract as questionable due to its inability to provide the required number of nurses and its questionable efficiency in filling "no shows." AHS responds that the government was sufficiently satisfied with its performance to extend the contract for 3 months. However, the record indicates that the contract was extended to allow adequate time to resolicit the requirement, since a determination had been made not to exercise the first of 4 option years in the contract.

With regard to the propriety of AHS's exclusion from the competitive range, we note that several of the other proposals received significantly higher evaluation ratings. An agency properly may determine whether or not to include a proposal in the competitive range by comparing the proposal evaluation ratings and the offeror's relative standing among its competitors. Interworld Maritime Corp., B-232305, Nov. 29, 1988, 88-2 CPD ¶ 531. Here, AHS's technical rating was lower than the seven other offerors retained in the competitive range, and its price was substantially higher than the lowest priced of those offerors. In these circumstances, we think the agency properly concluded that AHS's offer had no reasonable chance of being selected for award.

AHS also alleges that the Air Force failed to conduct meaningful discussions. According to AHS, the Air Force's November 16 letter requesting clarification and correction of deficiencies did not address the deficiencies discussed

above, such as AHS's failure to address continuing contractor reports to the medical center regarding CPR certification and AHS's failure to address how strictly the health certification program would be enforced, including doctor signature verification and immunization test results.

We believe the questions posed by the Air Force in its November 16 letter reflected the Air Force's concern with AHS's procedures for keeping the medical center apprised of the status of each nurse's CPR certification, and the Air Force's concern about AHS's enforcement of the health certification program. The letter specifically asked "as to who, when and how you plan to monitor the CPR certification of RNs." Furthermore, the letter specifically directed AHS to the requirement in the RFP's statement of work regarding initial verification of health examinations and immunizations, and current validations when tests were updated, and asked AHS to address the requirements "with attention on how, when, and where it will be accomplished."

The requirement that meaningful discussions be conducted to advise offerors of weaknesses, excesses, or deficiencies in their proposals does not mean that offerors are entitled to all-encompassing discussions. Crowley Maritime Salvage, B-234555, June 13, 1989, 89-1 CPD ¶ 555. Rather, an agency is only required to lead offerors into areas of their proposals needing responses or amplification. Id. The above questions clearly should have alerted AHS that the Air Force was concerned with AHS's procedure for providing written verification of CPR certifications and health examinations and immunizations, and thus we find meaningful discussions were conducted.

The protest is denied.



*for* James F. Hinchman  
General Counsel