



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ask Mr. Foster Travel Division

File: B-238305

Date: May 9, 1990

Lars E. Anderson, Esq., and Marc Stec, Esq., Bogle & Gates, for the protester.
 Maryann L. Grodin, Esq., Charles J. McManus, Esq., and David H. Turner, Esq., Office of the General Counsel, Department of the Navy, for the agency.
 Wendy T. Kirby, Esq., and Josephine L. Ursini, Esq., Hogan & Hartson, for Scheduled Airlines Travel Offices, Inc., an interested party.
 Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

1. Agency reasonably found protester's offer to contain deficiencies with regard to aspects of its organizational, staffing, quality control, and automation plans, as well as personnel qualifications.
2. Agency reasonably awarded a negotiated contract for travel services on the basis of initial proposals to the highest technically rated offeror, proposing the most advantageous combination of rebates, discounts, and price initiatives, where the solicitation informed offerors of that possibility and no discussions were conducted with any offeror.
3. Agency's communications with offeror concerning required small and disadvantaged business subcontracting plan relate to offeror's responsibility and do not constitute discussions or require that revised proposals be solicited from all offerors.
4. Protest alleging bias must present convincing evidence to support its claims, since procurement officials are presumed to act in good faith.

C-48480 / 141340

DECISION

Ask Mr. Foster Travel Division (AMF) protests the award of a contract to Scheduled Airlines Travel Offices, Inc. (SATO), under request for proposals (RFP) No. N00140-89-R-3295, issued by the Naval Regional Contracting Center, Philadelphia, Pennsylvania, for provision of official commercial travel and transportation services covering all Naval activities in the Eastern Region of the United States. AMF contends that the Navy improperly evaluated its proposal and improperly awarded the contract to SATO without conducting discussions with AMF.

We deny the protest.

The travel services to be provided under this contract include, but are not limited to, air, bus, and rail reservations and ticketing for all scheduled carriers; lodging and rental car arrangements; management information reports; and arrangement of conferences and seminars. The period of performance spans a base period ending September 30, 1990, followed by four 1-year option periods.

According to the RFP, offerors were to submit separate technical and price proposals. Each technical proposal was to be evaluated on the basis of 5 factors: (1) Implementation Plan, including the four subfactors of Organizational and Staff Planning, Operation, Transition, and Quality Control Plans; (2) Automation Plan; (3) Personnel Qualifications; (4) Corporate Experience; and (5) Training Plans.

As for "price," these services are provided at no cost to the government; the successful contractor's revenue comes through a concession or commission fee from the commercial vendors supplying the transportation and other services, based upon a percentage of gross sales made. However, offerors were required to submit price proposals, which were evaluated on the basis of the impact of proposed discounts, rebates, and pricing initiatives on the Navy's estimated cost for all covered travel during the base and option years.

The RFP provided that technical proposals would be considered significantly more important than price proposals, but the degree of importance of price proposals would increase with the degree of equality of other factors. Award was to be made to the responsible offeror whose proposal was considered most advantageous to the government considering technical merit and price. The RFP also notified offerors

that an award could be made on the basis of initial proposals, without discussions and, therefore, proposals should contain the offerors' best terms from a cost or price and technical standpoint.

The RFP was sent to 62 firms, four of which submitted proposals by the October 10, 1989, closing date. The proposals were evaluated by a Source Selection Evaluation Board which concluded that two of the four proposals were technically unacceptable in every factor and subfactor and could not be corrected without major revisions. AMF's proposal was found generally responsive to the RFP's requirements and to offer "several excellent innovations for quality customer services." However, the proposal was rated overall as "unacceptable, but correctable" through discussions, due to unacceptable ratings for its Organizational/Staffing, Quality Control, and Automation Plans, and Personnel Qualifications. SATO's proposal was rated overall as "highly acceptable."

As evaluated, SATO's price proposal was more beneficial to the government than AMF's proposal by more than \$4.3 million. Although the other two offerors' "prices" were lower than either AMF's or SATO's, the Board did not consider them for award on the basis of initial proposals because their technical proposals were rated as unacceptable and not correctable.

On November 30, the Source Selection Advisory Council met and discussed the strengths and weaknesses of the proposals and recommended award to SATO on the basis of its initial proposal. On January 3, the contracting officer awarded the contract to SATO. After a debriefing on January 8, AMF filed a protest with our Office.

AMF first contends that the Navy improperly evaluated its proposal as unacceptable. The evaluation of technical proposals is primarily the responsibility of the procuring agency which is responsible for defining its needs, as well as the best method of accommodating them, since it will necessarily bear the burden of any difficulties resulting from a defective evaluation. Consequently, our Office will not independently determine the relative merit of technical proposals, but will only examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. The protester bears the burden of showing that the evaluation is unreasonable. See EPE Technologies, Inc., B-233492, Feb. 21, 1989, 89-1 CPD ¶ 179.

AMF's proposal was rated as unacceptable but correctable for four deficiencies: (1) a failure to identify automated equipment by site; (2) an inadequate discussion of the procedures and internal controls for ensuring government discounts and rebates in the quality control plan; (3) a need for clarification of AMF's after hours reservation procedures; and (4) a failure of 3 out of 54 key personnel resumes to demonstrate the required experience. AMF maintains that its proposal should have been rated acceptable in all these areas since it met the RFP's requirements, and that it could easily have clarified the minor matters questioned by the evaluators.

We have reviewed AMF's proposal and the Navy's evaluation, and find nothing to indicate that the evaluation was unreasonable, inconsistent with the stated evaluation criteria, or violative of applicable law. In essence, AMF's contentions are simply a disagreement with the Navy's evaluation, which alone is insufficient to meet its burden of proof. See EPE Technologies, Inc., B-233492, supra. Further, AMF's attempts to show it did satisfy the RFP's requirements are unpersuasive. For example, with regard to AMF's failure to identify equipment by site, the RFP provided that in the Automation Plan:

"The offeror shall identify by site and describe in detail all automated equipment it proposes to use . . . in performance of the requirements of this contract."

In response to this requirement, AMF stated it would use two automated computerized reservation systems, one as primary and another as secondary for "each of the seven networks included in the Navy's Eastern Region." (Emphasis in original.) AMF argues that identification of equipment configuration (i.e. quantities of each piece of equipment) by site was not required and that the Navy's interpretation to the contrary is unreasonable. We disagree.

A technical exhibit to the RFP identified some 62 sites, including 31 branch offices, 24 remote ticketing sites, and the 7 central (network) travel offices referenced by AMF. Since these sites are not identical and require different staffing levels and quantities of equipment commensurate with expected volumes of business, we find the Navy's expectation of a site-by-site breakdown of equipment configurations to be eminently reasonable and that its interpretation was fairly encompassed by the plain language of the RFP.

Likewise, with regard to AMF's after-hours reservation procedures, we find the agency reasonably questioned AMF's agreement to meet the RFP's requirements. The RFP advised offerors that all commercial reservations must be made and tickets issued from government-approved facilities and AMF promised in one section of its proposal to meet this requirement. However, the RFP advised that centralized booking centers may be used only in connection with Navy travel-related emergencies and that Navy approval was required for such centers. In another section of its proposal, AMF provided that after-hours travel requests would be directed to its Minneapolis facility. While this may not represent an exception to the RFP's requirements as argued by the Navy, we find that it did create an ambiguity about which the agency properly could be concerned.

AMF, recognizing that its proposal contained informational deficiencies, including those in its resumes and quality control plan, asserts that they could have been corrected through discussions, and protests that the Navy conducted discussions with SATO alone. The Navy acknowledges that it corresponded with SATO between December 7 and January 3, concerning clarifications of SATO's small and disadvantaged business subcontracting plan. In response, SATO provided the requested clarifications and a revised plan incorporating them. The Navy contends that this correspondence did not constitute discussions as that term is used in negotiated pronouncements.

A contracting officer may make an award on the basis of initial proposals without holding discussions provided that the solicitation advises offerors of this possibility, no discussions in fact are held, and the competition or prior cost experience demonstrates that acceptance of the most favorable initial proposal would result in the lowest overall cost to the government at a fair and reasonable price. Federal Acquisition Regulation (FAR) § 15.610(a) (FAC 84-16); Lion Apparel, Inc., B-233511, Aug. 15, 1989, 89-2 CPD ¶ 142; Moorman's Travel Serv., Inc.--Request for Reconsideration, B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643. Once an agency holds discussions with any offeror, it must do so with all offerors in the competitive range. FAR § 15.610(b). However, we have held that the request for or providing of information that relates to offeror responsibility, rather than proposal acceptability, does not constitute improper discussions or require that revised proposals be solicited from all offerors. A.B. Dick Co., B-233142, Jan. 31, 1989, 89-1 CPD ¶ 106. Because the requirement for an acceptable small and disadvantaged

business subcontracting plan generally is applicable to the "apparently successful offeror," FAR § 19.702(a)(1) (FAC 84-50), we have viewed this requirement as relating to an offeror's responsibility. See A.B. Dick Co., B-233142, supra; Southeastern Center for Electrical Eng'g Educ., B-230692, July 6, 1988, 88-2 CPD ¶ 13.

Here, offerors were advised of the possibility of award without discussions and the Navy selected the highest technically rated offeror, SATO, whose proposal represented a \$4.3 million price advantage.^{1/} Further, the correspondence with SATO dealt with clarifications of its subcontracting goals and how they were broken down, matters of responsibility. A.B. Dick Co., B-233142, supra. Since communications relating to an offeror's responsibility do not constitute discussions it follows that the Navy's request for clarifications in SATO's subcontracting plan did not require discussions to be conducted with or that revised proposals be solicited from AMF. Consequently, we have no basis to object to the agency's award of the contract on the basis of initial proposals.

Our conclusion is not changed by AMF's observation that the evaluators mentioned SATO's subcontracting plan in their overall rating of SATO's implementation plan; that the Navy "admitted," at an informal conference conducted by our Office, that the acceptability of the subcontracting plan was part of the technical evaluation; or that SATO viewed its revised plan as an "enhancement" to its proposal. Notwithstanding the so-called "admission" of the Navy, from our review of the record, it is clear that the subcontracting plan was not encompassed by a technical evaluation criterion. Further, the technical and price evaluations, as well as the recommendation for award to SATO, had been made prior to the request for clarifications. Moreover, the notation by the technical evaluators that such a plan was, among other matters, "well defined" and indicative of SATO's capability to perform is only representative of the

^{1/} AMF contends that SATO's pricing initiatives represent a decrease from its successful offers in two other Navy regions, and that discussions generally produce more advantageous prices for the government. However, despite SATO's relatively lower price initiatives, we note that AMF's price initiatives would cost the Navy \$4.3 million more and that AMF has not indicated how it would close the significant gap between SATO's and its own price initiatives. Under the circumstances, there is no indication that the Navy had reason to believe that discussions would have resulted in a more advantageous price.

evaluators' assessment of SATO's responsibility and not technical merit. Likewise, SATO's belief that its revised plan was an "enhancement" to its proposal could not turn a responsibility matter into a technical acceptability matter.

Finally, AMF contends that the evaluation of SATO was biased as evidenced by its being awarded contracts for the Western, Central, and now, Eastern Navy regions, as well as by a number of "examples" of bias in the evaluation process. Specifically, AMF observes that SATO was erroneously given credit for being accredited by certain organizations; received an undeserved rating for its subcontracting plan; received highly acceptable ratings, even though it took exception to the space and security requirements, and proposed the same central reservation desk for which AMF was rated unacceptable; received high ratings for merely meeting other RFP requirements; and generally was described more positively by the evaluators while AMF was described "starkly."

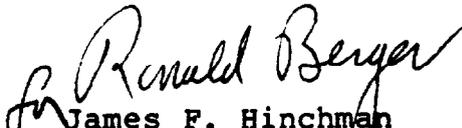
Any contention that the government acted with bias in evaluating an offeror and excluding it from a contract award must be supported by convincing evidence that agency procurement officers had a specific, malicious intent to harm the protester since those officers are presumed to act in good faith. See Micronics, Inc., B-234034, May 3, 1989, 89-1 CPD ¶ 420. Our review of the record fails to disclose any evidence of bias in the evaluation of SATO's proposal.

For example, with regard to the erroneous attribution of memberships to SATO, we find that the error is largely illusory. The evaluators correctly noted that SATO had "accreditations" in two of the four organizations. As to the other two organizations, SATO's proposal stated that it was "authorized for representation of all travel modes" by one and was "recognized" by the remaining organization.^{2/} Moreover, accreditation from these organizations was not required by the RFP. Rather, offerors were required to be accredited or have authorization to act as an agent for air, rail, bus, and water, and submit a contractor's certification attesting to actual status. SATO and AMF both met this requirement and received "highly acceptable" ratings after the contracting officer's review.

^{2/} We also note that as to this last organization, the evaluation contains an apparent typographical error. The evaluators made reference to the organizations by acronyms and erroneously referred to the "IATAN" (the International Airlines Travel Agency Network as the "IATA.")

With regard to SATO's "undeserved rating" on its sub-contracting plan, from our review of the record, we find nothing inconsistent in the evaluators' assessment that the plan was "well defined" and the subsequent request for clarifications of goals. Likewise, our review of the proposals reveals that the SATO proposal generally was more detailed than AMF's and deserving of its "highly acceptable" rating. In this regard, we agree with the Navy that SATO's proposal took no exception to the RFP's requirements, including SATO's offer of a 24-hour reservation desk. Unlike AMF's proposal, which we found created an ambiguity regarding the offer of a central reservation desk, the SATO proposal made clear that its "desk" was an alternative enhancement to its proposal, subject to Navy approval. In general, we find AMF's allegations of bias to be based on inference and supposition, and thus insufficient to meet its burden of proof. Micronics, Inc., B-234034, supra.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel