



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Walton County Association for Retarded
Citizens, Inc.

File: B-242009

Date: March 21, 1991

Shirley H. Ward for the protester.
Betty C. McMurtry, U.S. Department of Agriculture, Farmers
Home Administration, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Downgrading of protester's proposal in evaluation was
reasonable where proposal did not include significant
information required by the solicitation and agency reasonably
evaluated protester's performance under current contract as
deficient.

DECISION

Walton County Association for Retarded Citizens, Inc. (ARC)
protests the award of a contract to Mary Diane Hunter under
Department of Agriculture, Farmers Home Administration (FmHA),
request for proposals (RFP) No. 09-00-0-105P, issued as a
total small business set-aside for caretaking services for
single-family dwellings owned or leased by FmHA in DeFuniak
Springs, Florida. ARC principally contends that the agency
improperly evaluated its proposal.

We deny the protest in part and dismiss it in part.

The RFP provided for award of one or more indefinite quantity,
fixed-price, 1-year contracts for removal of household trash,
furnishings, and garbage from the single-family dwellings;
property yard maintenance services, including mowing the grass
and trimming trees and shrubs; replacing windows and doors as
necessary to protect and secure the property; boarding up and
winterizing dwellings; and routinely inspecting the properties
for unauthorized entry and/or damage caused by vandals or by
the elements. The RFP listed the following three technical
evaluation factors: experience and qualifications of the
offeror and its personnel (50 of 100 points); understanding

resource requirements and the organizational plan to acquire resources such as manpower, equipment, and waste disposal sites (35 points); and management of project requirements, including priority handling of task orders for initial services and routine maintenance (15 points). The RFP cautioned offerors to examine the drawings, specifications, schedule, and all instructions, since failure to do so would be at the offeror's risk, and reserved FmHA's right to make award to other than the lowest priced, technically qualified offeror if the technical merit of another proposal justified the additional cost.

FmHA received 46 proposals in response to the solicitation; 31 proposals, including ARC's, were included in the competitive range. Following written and oral discussions, FmHA requested best and final offers (BAFO). In reviewing ARC's BAFO, the evaluation panel determined that the firm, the incumbent contractor for these caretaking services, had failed to address several areas of the RFP and that its proposal apparently consisted of the same information ARC submitted under the prior solicitation for the requirement, even though the requirement under this RFP was significantly changed. In addition, discussions with the contracting officer's representative (COR) on ARC's current contract (for purposes of evaluating the firm under the experience and qualifications factor) indicated that while ARC performed satisfactorily during the beginning of the contract, the departure from ARC of a supervisor (Ms. Hunter, the awardee), resulted in a significant downturn in ARC's performance due primarily to inadequate worker supervision.

As a result, ARC's BAFO, priced at \$46,400, received a technical rating of 62 points, while Ms. Hunter's BAFO, priced at \$48,000, received a technical rating of 80 points. FmHA concluded that, although Ms. Hunter's proposed price was \$1,600 higher than ARC's, the technical advantages to be gained from her proposal justified the slightly higher cost; the agency therefore made award to Ms. Hunter on September 21. After denial of ARC's agency-level protest on October 11, ARC filed this protest with our Office.

ARC maintains that the agency's evaluation of its proposal was improper because it was based largely on untrue, negative information about the firm's performance under its current contract. ARC maintains that worker supervision in fact was adequate for the duration of its current contract, and that its overall performance was satisfactory.

We will examine an evaluation to insure that it was reasonable and consistent with the stated evaluation criteria. Fairfield Mach. Co., Inc., B-228015; B-228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562. The protester has the burden of affirmatively proving

its case and mere disagreement with an evaluation does not satisfy this requirement, Structural Analysis Tech., Inc., B-228020, Nov. 9, 1957, 87-2 CPD 466.

We find the evaluation here reasonable. First, the agency's downgrading of ARC's proposal in the experience area, where ARC only received 35 of 50 points, was proper. In lieu of the required information in its offer, which ARC failed to provide, the agency sought information on ARC's performance from the COR. The COR stated that after Ms. Hunter's departure from ARC, FmHA dwellings were left open by ARC personnel, lawn mowing services had either been performed late or not at all, and task orders explaining the work requirements had been picked up late or not at all; as a result, FmHA personnel became overburdened performing the work that ARC failed to perform.

Although ARC generally denies the agency's findings, we find nothing in the record that leads us to question the verity of the information furnished by the COR or FmHA's conclusions based on that information. ARC cites a letter of March 15 from the contracting officer on its current contract commending ARC for its "fine service," but this was before Ms. Hunter left ARC's employ (in June), the point at which the COR reported ARC's performance declined. ARC also points to the fact that it awarded its supervisors pay raises or Certificates of Appreciation as evidence of their good performance under the contract. However, a contractor's view of its employees' performance as being of high quality does not preclude the government from concluding otherwise where, as here, its conclusion is supported by the record. Consequently, FmHA properly downgraded ARC's proposal under the experience and qualifications evaluation factor based on the information it received from the COR.

Further, the agency's evaluation of ARC's proposal in the management area, where ARC only received a score of 6 of 15 points, was proper. The record shows that, although the solicitation required offerors to prepare their proposals in a narrative format, addressing in a specific order seven criteria relating to the three main evaluation factors, the evaluators found that ARC's proposal merely synopsized the experience and qualifications of its firm and personnel without specifically addressing all of the required criteria in the order specified. ARC's proposal also completely failed to address, as required by the RFP, how ARC will manage projects to meet deadlines set forth in task orders, conduct routine inspections and report damage and break-ins to FmHA properties, and track task orders, or the method of accounting ARC will use when completing invoices for work performed. Without adequate information with which to evaluate ARC's management of the project requirements, FmHA determined that

ARC's proposal was risky and properly downgraded it in this area. It is an offeror's obligation to establish that what it proposes will meet the government's needs, and where a proposal fails to include detailed information called for by the RFP, the offeror's failure to furnish sufficient information may reasonably be identified as a weakness. Integrated Microcomputer Sys., Inc., B-239126.4, Sept. 11, 1990, 90-2 CPD ¶ 195; see generally Aydin Corp. (West), B-237450, Jan. 18, 1990, 90-1 CPD ¶ 69.1/

ARC raises numerous additional arguments that also are without merit. First, the protester maintains the awardee will not be able to personally perform at least 50 percent of the work in the statement of work (SOW), as required by the solicitation. However, the awardee agreed in its proposal to comply with this requirement. Whether the awardee is capable of meeting it is a matter of the firm's responsibility; we will not review affirmative determinations of a prospective contractor's responsibility absent circumstances not relevant here. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1990); AJK Molded Prods., Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96.

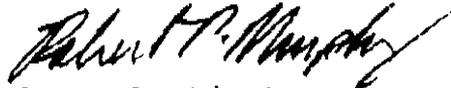
Second, ARC alleges the agency improperly made award to a contractor who failed to obtain the requisite state and local licenses. However, the fact that the awardee may not possess any required licenses at the time of award is not a proper basis for denying the award, since compliance with licensing requirements that are not specifically set forth in the solicitation is a matter to be resolved by the contractor and the local authorities, not by federal officials. Rowe Contracting Serv., Inc., B-228642, Oct. 29, 1987, 87-2 CPD ¶ 416. There is no specific licensing requirement in the solicitation here.

Third, ARC complains the awardee is not a small business. However, we will not review matters of small business status. 4 C.F.R. § 21.3(m)(2). Fourth, the protester argues the solicitation was deficient because it contained conflicting closing dates of both July 27 and August 15. Our Regulations require that protests based upon alleged improprieties in the solicitation be filed before the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Since ARC raised this issue on November 8, it is untimely. See Campbell Eng'g, Inc., B-231126, Aug. 11, 1988, 88-2 CPD ¶ 136. Finally, ARC

1/ Under the criteria for understating of resource requirements, the evaluators expressed concern that ARC had not fully documented its ability to acquire and utilize the necessary resources. ARC has not challenged this portion of the evaluation and we therefore need not consider it further.

seems to argue that the agency acted in bad faith, discriminating against ARC for employing mentally handicapped personnel. This allegation is not supported by evidence but, rather, is based on ARC's speculation, which is insufficient to establish bad faith. Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD 5 275.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel