



Comptroller General
of the United States
Washington, D.C. 20548

146682

Decision

Matter of: Pro-Mark, Inc.

File: B-247248; B-247249; B-247250; B-247251;
B-247252; B-247253; B-247254; B-247256;
B-247257; B-247258

Date: May 18, 1992

Euvester S. Morris for the protester,
Kenneth C. Robertson, Farmers Home Administration, for the
agency.
Barbara Newby for DATACORP, an interested party in B-247253.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Where protester's quality control plans contained only a general discussion of how it instructed employees to double-check mathematical calculations in reports to be delivered to the agency regarding credit renewals, evaluators did not act unreasonably in downscoring protester's proposals under the technical evaluation factor related to quality control.
2. Contracting officer acted reasonably in reducing protester's quality control scores assigned by an inexperienced panel of evaluators to conform to lower scores assigned by experienced evaluators for identical plans submitted with other proposals because the ratings of the experienced evaluators were reasonable and conformed to the evaluation criteria relating to quality control.
3. Protester's disagreement with agency's decision not to award it additional technical points under quality control evaluation factor for its best and final offers does not provide a basis for questioning the agency's determination that the revised offers remained weak under this factor.
4. Allegation that an awardee is not performing in accordance with its contracts is dismissed because it involves a matter of contract administration this Office does not review.
5. The fact that awardee hired protester's employee after award does not indicate that awardee had insufficient resources to perform as of the time of award.

6. Record does not support protester's contention that an awardee's low score after the evaluation of initial proposals should have eliminated it from the competitive range or that its high score after best and final offers was unreasonable.

7. Allegation that agency failed to issue preaward notices of its intention to make awards under solicitations which were set aside for small businesses is dismissed as untimely since it was not filed within 10 working days after protester learned of the defect.

DECISION

Pro-Mark, Inc. protests the award of 10 separate fixed-price requirements contracts by the Farmers Home Administration (FmHA) under requests for proposals (RFP) Nos. 28-00-1-169 and 28-00-1-171 through 179.¹ Each RFP was issued as a total small business set-aside for the provision of interest credit renewal (ICR) services to single-family housing borrowers under FmHA's purview. Each RFP contained identical terms and conditions for designated geographic areas in Mississippi. Under the terms of the resulting contracts, contractors are required to disseminate ICR packages to FmHA borrowers in the relevant geographic areas, schedule and locally conduct personal (generally, face-to-face) interviews, process the borrowers' applications and submit packages of documented results to the agency. Pro-Mark objects to the manner in which its technical proposals were evaluated, questions the evaluation of the proposals submitted by three particular awardees and contends that the agency failed to provide preaward notices of its intention to make awards under the RFPs.

¹This decision covers Pro-Mark's 10 separately filed protests against the awards of contracts by the FmHA under the solicitation numbers identified below next to the related file numbers assigned by this Office:

| <u>File Number</u> | <u>Solicitation No.</u> |
|--------------------|-------------------------|
| B-247248 | 28-00-1-169 |
| B-247249 | 28-00-1-171 |
| B-247250 | 28-00-1-172 |
| B-247251 | 28-00-1-177 |
| B-247252 | 28-00-1-173 |
| B-247253 | 28-00-1-174 |
| B-247254 | 28-00-1-178 |
| B-247256 | 28-00-1-175 |
| B-247257 | 28-00-1-179 |
| B-247258 | 28-00-1-176 |

We deny the protests in part and dismiss them in part.

BACKGROUND

Each RFP contemplated the award of a contract to the offeror whose proposal had the technical/price relationship determined to be most advantageous to the government. Technical merit was to be evaluated with respect to four listed factors:

| | |
|---------------------------------|-----------|
| Qualifications and Experience | 40 points |
| Project Approach and Management | 30 points |
| Quality Control | 20 points |
| Office Facilities | 10 points |

Pro-Mark's initial proposals under RFP Nos. 173, 175, 176, 177, 178, and 179 were reviewed by a panel of experienced evaluators and each was assigned a total of 90 technical points by that panel. Pro-Mark only received 10 out of a possible 20 points for its quality control plans because the panel unanimously determined that the firm had not described a system for double-checking the accuracy of mathematical calculations it would be performing for the ICR packages to be submitted to FmHA.²

In four other cases, Pro-Mark's initial proposals under RFP Nos. 169, 171, 172, and 174 were reviewed by a less experienced panel of substitute evaluators used by the agency during a heavy work load period to help meet its contracting deadlines. In each of these cases, the substitute panel assigned the protester less than 90 total technical points; however, Pro-Mark's proposals did receive the maximum of 20 points under the quality control factor. These four evaluations were the subject of a review conducted by the contracting officer in conjunction with the chairman of the experienced evaluation panel because errors were suspected. As a result of the review, the scores of a number of offerors were adjusted. In each case, Pro-Mark's total technical score was increased. While 10 points were subtracted by the contracting officer from the protester's perfect quality control scores, the firm was awarded the maximum number of points for all other factors. Thus, after the scoring adjustment, all 10 of the protester's initial proposals received technical scores of 90 points.

Written discussions were conducted under all of the RFPs. In these discussions, Pro-Mark was informed that there was a weakness in its quality control plan and the firm was asked to describe its system for double-checking the accuracy of

²The quality control plans submitted under each of the 10 RFPs were identical.

its mathematical calculations. Pro-Mark addressed the issue in the same manner in each of its best and final offers (BAFO). The BAFOs were reviewed by FmHA; however, Pro-Mark did not receive any additional points under the quality control factor as a result and the agency reports that, after BAFOs, the protester's proposals were considered to be acceptable while still containing a weakness under the quality control factor.

The contracting officer reviewed the initial proposals as modified by the BAFOs together with the results of the technical evaluations in making his award decisions. Under RFP Nos. 169, 171, 172, 174, 176, and 177, award was made to the low priced offeror. Under three of these six RFPs, Nos. 171, 176 and 177, the awardee was also the technically highest ranked offeror. Under the other three RFPs, the contracting officer made price/technical tradeoff decisions in which he concluded that the differences between the awardees' somewhat lower technical scores and those of higher rated offerors were insignificant in comparison to the savings to be obtained by awarding to the low priced offerors. With respect to RFP Nos. 173, 175, 178 and 179, awards were made to second low priced offerors because the technical advantages inherent in their proposals were determined to be significant in comparison to the proposals of the low priced offerors. Pro-Mark's ranking under the 10 RFPs ranged from 4 to 8 under price, and 3 or 4 under technical. All awards were made on January 3, 1992, and Pro-Mark was notified by letters dated the same day.

PROTESTS

For the 10 procurements, Pro-Mark: (1) objects to the manner in which its proposals were evaluated under the quality control factor, (2) questions the evaluations of certain awardees' proposals, and (3) contends that FmHA failed to provide preaward notice of its intention to make awards under the various small business set-asides.

QUALITY CONTROL ISSUES

Pro-Mark principally contends that the agency failed to properly consider its initial and final proposals under the quality control factor. In the protester's view, proper consideration of the proposals should have resulted in the firm receiving full quality control credit and, thus, perfect technical scores of 100 under each RFP.³ Pro-Mark

³Pro-Mark, who is the incumbent ICR contractor, also objects to the agency's failure to consider the cost of training new contractors' employees in making its price/technical trade-
(continued...)

stresses that its initial proposals did discuss plans to double-check ICR packages for errors contrary to the findings of the experienced evaluators who rated the firm deficient under the quality control factor, and the protester suggests that the agency failed to properly consider the additional discussion of the issue contained in its BAFOs. Moreover, Pro-Mark alleges that the contracting officer acted arbitrarily in lowering its quality control scores in the four instances where the substitute evaluators had given the protester full quality control credit.

At the outset, we note that it is not the function of this Office to evaluate technical proposals. Rather, we will examine the agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria listed in the RFP. The determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless it is shown to be arbitrary. A protester's disagreement with the agency's judgment is itself not sufficient to establish that the agency acted arbitrarily. Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288.

The evaluation plan used to score the proposals provided for a score of 20 points under the quality control factor for proposals which contained no weaknesses and 10 points for proposals which were acceptable except for weaknesses that could affect accuracy. A review of Pro-Mark's initial proposals shows that the firm briefly mentioned that it instructs its employees to double-check figures for accuracy; no particular system for double-checking is described. Thus, we have no basis for concluding that the experienced evaluators who assigned a quality control score of 10 to Pro-Mark's proposals under RFP Nos. 173, 175, 176, 177, 178, and 179 acted unreasonably in doing so. Rather, they acted in accordance with the stated evaluation criteria and the evaluation plan under which all competing proposals were rated.

Nor do we find that the record supports a conclusion that the contracting officer acted improperly in adjusting Pro-

³(...continued)

off decisions. The RFPs state that FmHA will train new employees and, since the cost of training is not a listed evaluation criterion, there is simply no legal basis for concluding that FmHA should have considered training costs in its award analyses. See Environmental Technologies Group, Inc., B-235623, Aug. 31, 1989, 89-2 CPD ¶ 202 (agency is not required to consider potential cost savings which are not listed as price evaluation factors in the solicitation).

Mark's quality control scores downward in the four instances in which he corrected the ratings made by the substitute evaluation panel under RFP Nos. 169, 171, 172, and 174. Contracting officers are not bound by recommendations from technical evaluators and they may reevaluate proposals and downscore them if necessary. See Bank St. College of Educ., 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607. As with any technical evaluations, contracting officers' decisions in this regard will be reviewed to ensure that they are reasonable and consistent with the stated evaluation criteria and the fact that a protester or an evaluator may disagree with a contracting officer's conclusions does not itself render his evaluation unreasonable. Id.

As discussed above, the assignment of 10 points under the quality control factor to Pro-Mark's proposals by the experienced evaluation panel in six instances was reasonable and consistent with the evaluation criteria set forth in the RFP. The four proposals scored by the inexperienced substitute panel contained quality control plans which were identical to those reviewed by the experienced panel. In our view, the conclusions of the inexperienced panel are not supported by the contents of the protester's initial proposals and, therefore, we find no basis for objecting to the contracting officer's decision to correct the scoring errors to conform the unsupported ratings to those which were rationally based and consistent with the criterion used to evaluate all competing proposals.

Further, our review of Pro-Mark's BAFOs reveals that the protester elaborated to some extent on the training it provides its employees to ensure the accuracy of their work. For example, the BAFOs state that the firm instructs its employees to finish work early to permit time for review, to use "tape calculators" to ensure that records are available for review, to wait a day or two before reviewing calculations, and to take regular rest breaks in order to remain alert. The record reflects that the agency reviewed this revised description of the protester's quality control system and that it still considered the protester's approach to be weak, although acceptable. Since we have been offered nothing more than Pro-Mark's disagreement with the agency's judgment in this regard, there is no basis to question the agency's decision not to award the protester any additional points as a result of its BAFOs. Realty Executives, supra.

ISSUES CONCERNING SPECIFIED AWARDEES

In its comments on several agency reports in these matters, Pro-Mark makes allegations with respect to the following awardees: (1) Joseph Freburger (B-247248, RFP No. 169;

B-247257, RFP No. 179); (2) Beco, Inc. (B-247249, RFP No. 171); and Linda Oatis (B-247252, RFP No. 173; B-247254, RFP No. 178; and B-247256, RFP No. 175).

With respect to Mr. Freburger, Pro-Mark has submitted evidence in the form of a letter the awardee has purportedly sent to FmHA borrowers which indicates that ICR interviews will be conducted by telephone rather than in a face-to-face manner as prescribed in the RFP. Pro-Mark contends that this evidence indicates that the awardee was not evaluated on a basis common to all offerors. Pro-Mark also has submitted evidence in the form of a memorandum from a potential subcontractor of Mr. Freburger's, who was contacted by the firm after award, which indicates that the awardee will process ICR materials outside of Mississippi. Pro-Mark contends that this evidence shows that the awardee did not have sufficient personnel and facilities in the areas he was to service at the time of awards.

Our review of Mr. Freburger's proposals discloses that he specifically proposed to conduct ICR interviews on a face-to-face basis at a number of public library locations he had secured within the relevant Mississippi service areas covered by the contracts he was awarded and that his proposals were evaluated on that basis. Our review further discloses that he proposed specific personnel and subcontractors to perform the work required by the RFP. In considering the evidence supplied by Pro-Mark, we note that the RFP permits ICR interviews to be conducted by telephone under specified circumstances and we further note that the protester has not described the context in which it believes the awardee's letter to borrowers was actually sent. In any event, whether Mr. Freburger is performing in a manner inconsistent with the contract terms is a matter of contract administration which is the responsibility of FmHA to supervise and is outside the purview of our bid protest function. Minigraph, Inc.--Recon., B-237873.3, Dec. 10, 1990, 90-2 CPD ¶ 492.

With respect to Beco, Inc., Pro-Mark has submitted evidence showing that, after award, the firm hired one of the protester's employees to perform ICR interviews in one of two counties covered by RFP 171 (B-247249), and that the awardee asked the individual to supply office space in which to conduct the interviews. Pro-Mark argues that these circumstances indicate that Beco did not have the facilities or personnel in place at the time its contract was awarded.

Beco, in fact, proposed two persons to conduct interviews in the two-county area while Pro-Mark only proposed one--the individual in question--to cover both counties. Beco also identified office locations in each county where interviews would be conducted. Since Beco's proposed personnel and

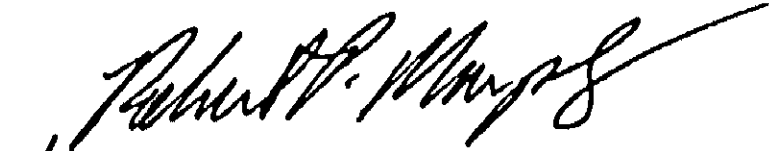
facilities were evaluated by FmHA prior to award as fully acceptable and since the RFP contained no restrictions on the substitution of personnel not identified by an offeror as "key" to performance, we find no merit to the protester's argument to the effect that hiring an additional person--who had been regarded as acceptable in the evaluation of its own proposal--somehow shows a failure on Beco's part to have sufficient personnel and facilities in place at the time of award.

With respect to the awardee, Linda Oatis, whose proposals received scores of 67 during the initial evaluation and were accorded scores of 97 following BAFOs, Pro-Mark questions why the offeror was permitted to remain in the competitive range in the first place and asserts that the 30-point increase in her final score is not documented. Our review of the BAFOs submitted by Ms. Oatis indicates that she provided responses to the perceived weaknesses identified in her initial proposals during discussions and there is nothing in the record beyond the protester's own speculation that provides a basis for questioning the final scores she received as a result. In our view, the fact that Ms. Oatis was able to improve her scores confirms the reasonableness of the contracting officer's decision to include her proposals within the competitive range after the initial evaluations.

PREAWARD NOTICE

Finally, in its March 26 comments, Pro-Mark alleges for the first time that the agency failed to give preaward notice of its intention to make the awards as required for small business set-asides pursuant to Federal Acquisition Regulation § 15.1001(b)(2). This alleged defect was apparent to Pro-Mark when it received notice of the awards shortly after January 3. Since the issue was not raised before this Office within 10 working days of the time Pro-Mark learned of the failure to issue preaward notices, it is untimely and we, therefore, dismiss the allegation. Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1992). In any event, Pro-Mark was not prejudiced by any failure to give preaward notice of the intended awards.

The protests are denied in part and dismissed in part.


for James F. Hinchman
General Counsel