



Comptroller General
of the United States

Washington, D.C. 20548

1026278

Decision

Matter of: Building Services Unlimited, Inc.

File: B-252791.2

Date: August 25, 1993

Carol L. O'Riordan, Esq., Shapiro, Lifschitz and Schram, P.C., for the protester.

Garrett L. Rassing, Esq., Department of the Navy, for the agency.

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DIGEST

A proposal that was the lowest rated technically and highest priced was properly excluded from the competitive range where the agency reasonably determined that the proposal contained numerous deficiencies that would require major revisions for the proposal to become acceptable.

DECISION

Building Services Unlimited, Inc. (BSUI) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N62467-92-R-0932, issued by the Department of the Navy for construction and repair services. BSUI argues that the Navy's evaluation was unreasonable.

We deny the protest.¹

The RFP, issued as a total small disadvantaged business set-aside, contemplated the award of a fixed-price, indefinite quantity contract for construction and repair services at the Naval Surface Warfare Center in Crane, Indiana, for a 13-month base period and 2 option years. The RFP stated that a minimum of \$500,000 would be ordered during the term of the contract, and a maximum of \$7,500,000 could be

¹Portions of the protest record are subject to a General Accounting Office protective order, to which counsel for BSUI has been admitted. Our decision is based upon protected, confidential information and is necessarily general.

ordered. Offerors were also informed that delivery orders would range from a minimum of \$500 per order to a maximum of \$150,000.

The RFP included a unit price book (UPB), containing price information for a variety of work items in specified units of measure. The RFP required offerors to provide percentage factors for normal and other than normal working hours to accomplish the contract work and informed offerors that the actual cost of contract work would be determined by multiplying the UPB unit prices by the applicable percentage coefficient.

The RFP provided that award would be made to the offeror whose proposal was the most advantageous to the government, price and other factors considered. Price and technical evaluation factors were stated to be approximately equal in importance. The following three equally weighted technical evaluation factors, and their subfactors, were set forth as follows:

1. Management ability
 - a. Demonstrated ability to coordinate multiple subcontractors on single or multiple projects
 - b. Quality control plan
 - c. Purchasing system
 - d. Corporate resources to support on-site organization
 - e. Management plan for on-site staff
 - f. Labor relations plan
 - g. Start-up plan
2. Experience: "relevant to the requirements of the RFP, and demonstrates ability to manage/construct multiple small and medium scale construction and repair projects simultaneously. Experience demonstrates history of timely performance."
3. Subcontracting support capability
 - a. Utilization of subcontractors
 - b. List of prospective subcontractors
 - c. Response time plan

Detailed proposal preparation instructions were provided that, among other things, required offerors to address each of the stated evaluation factors and subfactors on forms supplied with the solicitation. While there was a form for

each evaluation subfactor, the RFP stated no proposal page limits.

Five proposals, including that of BSUI, were received by the closing date for receipt of proposals. BSUI's proposal was evaluated as containing numerous deficiencies and to be the lowest rated of the five proposals. Specifically, the Navy found:

"The list of projects presented by [BSUI] does not demonstrate the ability to manage and/or construct multiple construction projects simultaneously. The offeror has failed to demonstrate an understanding of on-site management required, and the quality control plan does not sufficiently ensure quality performance. The list of proposed management staff does not indicate that there are sufficient qualified corporate resources available to support the on-site organization. The offeror has failed to demonstrate adequate experience of proposed key management personnel relative to the requirements of this contract. The list of projects does not clearly demonstrate a history of satisfactory performance in government construction contracts since most listed were service type contracts with only a few small (less than \$25 [thousand]) construction projects. Although the offeror has proposed a cadre of basically qualified subcontractors, the offeror's proposal does not discuss any plan for managing subcontractors. There was no plan or procedures to minimize response times to delivery order requirements."

BSUI's proposal was evaluated to be either marginal or unacceptable under each RFP evaluation subfactor, and to be unacceptable under each evaluation factor. BSUI's evaluated price was also the highest of the five offerors.

Of the other four proposals received by the Navy, two were found acceptable, one was found susceptible of being made acceptable, and another was found technically unacceptable. The Navy concluded that BSUI's proposal could not be made acceptable without a complete revision of its proposal, and excluded BSUI's proposal and the other unacceptable proposal from the competitive range. The three remaining proposals were included in the competitive range.

BSUI challenges each of the agency's evaluated deficiencies in its proposal and asserts that the agency's evaluation was unreasonable and not in accordance with the stated evaluation factors. BSUI also alleges that the Navy did not

evaluate proposals equally; that is, the protester argues, BSUI's proposal was downgraded for lack of information while other offerors provided that same level of information and received higher technical scores.

The evaluation of proposals and the resulting determination as to 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 on the best methods of accommodating them. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Offers that are technically unacceptable as submitted and that would require major revisions to become acceptable are not required to be included in the competitive range. ARINC Research Corp., B-248338, Aug. 19, 1992, 92-2 CPD ¶ 172. In reviewing an agency's evaluation, we will not evaluate the technical proposals anew but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP criteria. Abt Assocs. Inc., supra.

From our review of the record, including BSUI's and the other offerors' proposals, the agency's evaluation documentation, and the parties' arguments, we find no basis to question the great majority of the assessed deficiencies in BSUI's proposal. The record also supports the agency's determination that the correction of these deficiencies would require, in the aggregate, substantial revisions to BSUI's proposal for that proposal to become acceptable.

For example, BSUI's proposal was downgraded under the management ability evaluation factor because BSUI failed to demonstrate its ability to coordinate multiple subcontractors on single or multiple projects that were similar in size and complexity to the contemplated contract work. Specifically, the Navy found that while BSUI stated in its proposal that it had performed more than 85 delivery orders that in total exceeded \$700,000, the three projects BSUI identified in its proposal were of small dollar amounts (between \$16,000 and \$25,000) and only one of the identified projects (on which BSUI managed two subcontractors) showed coordination of multiple subcontractors. The Navy asserts that since BSUI had chosen to highlight these projects in its proposal, these projects were considered to most clearly demonstrate BSUI's capabilities.

BSUI contends that the Navy's evaluation of the subcontractor management subfactor was unreasonable because the Navy "ignored" the more than 85 delivery orders that BSUI performed, which assertedly evidenced BSUI's subcontractor management ability. BSUI also argues that the stated evaluation criteria did not provide for consideration of whether

BSUI's proposal demonstrated ability to coordinate subcontractors on projects of similar size and complexity.

From our review of BSUI's proposal, we find the agency reasonably assessed BSUI's subcontractor management ability as deficient. While BSUI's proposal states generally that it can handle multiple subcontractors on numerous, simultaneous projects, its proposal simply did not demonstrate this ability. Rather, as the Navy found, the projects BSUI featured in its proposal for this subfactor reasonably indicate limited ability on fairly small dollar delivery orders. Furthermore, we also see no basis to object to the Navy's consideration of whether BSUI had demonstrated its ability to coordinate subcontractors on projects of "similar size and complexity." The RFP informed offerors that their ability to manage multiple subcontractors on multiple projects would be evaluated. In our view, the ability to manage subcontractors on projects equivalent in size and complexity to the work contemplated by the solicitation is intrinsically related to the stated subfactor and need not be separately stated in the solicitation. See Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

BSUI's proposal was also downgraded under the corporate resources subfactor because BSUI failed to demonstrate adequate corporate resources to support an on-site organization. For this subfactor, offerors were informed that their proposals would be evaluated to ensure:

"Adequate resources are available at company headquarters to support the on-site organization. List proposed management staff, their backgrounds, and their respective positions with regard to this contract."

The Navy found that BSUI did not have sufficient qualified corporate resources to support the proposed on-site organization. Specifically, the Navy was concerned that, of the five individuals identified in BSUI's proposal for its corporate organization, only one showed any significant experience in construction project management, and that individual currently owned and operated three other independent businesses and was not located near BSUI or the job site at Crane, Indiana.

BSUI does not specifically challenge the agency's assessment of the limited size and experience of BSUI's corporate organization, but contends that while its proposal was downgraded because its one individual with construction experience had other business interests, other offerors were

evaluated as acceptable under this subfactor despite having a number of open contracts that would require the attention of those offerors' corporate organizations. We have reviewed the proposals and evaluations of the offerors BSUI alleges received the benefit of an unequal evaluation, and find that these offerors have substantially larger corporate organizations, with specific construction project experience, to support their proposed on-site organizations. There is simply no support for BSUI's contention of an unequal evaluation under this subfactor.

BSUI similarly alleges that its proposal was unequally evaluated under the quality control subfactor, asserting that its proposal was unfairly downgraded for the use of allegedly ambiguous and vague standards where other offerors' proposals were equally ambiguous and vague. However, BSUI, despite having access to the other offerors' proposals and evaluation documentation under the protective order, did not identify which other offerors were allegedly unfairly or unequally rated higher under this subfactor. In any event, the record shows that the agency assessed a number of legitimate deficiencies in BSUI's proposal under the quality control subfactor, and we find that, on balance, BSUI was reasonably found deficient for this subfactor.

BSUI also complains that its proposal was unfairly downgraded under the labor relations plan subfactor for its failure to provide a plan to prevent labor problems or disputes since other offerors also did not provide such a plan. However, the record shows that the proposals of the other offerors that did not provide a plan to prevent labor problems were evaluated as marginal for this subfactor, just as BSUI's proposal was evaluated.

BSUI's proposal was also downgraded under the experience and subcontracting support capability evaluation factors. Under the experience factor, the agency determined that BSUI's experience and the experience of its key management and technical personnel was limited, and that the list of BSUI's on-going and completed projects did not demonstrate a history of satisfactory performance in construction activity. Under the subcontracting support capability factor, the Navy downgraded BSUI's proposal for not specifically describing how BSUI intended to manage its subcontractors and for failing to plan for minimizing the response time between the firm and its subcontractors. BSUI challenges some, but not all, of the assessed deficiencies under each of these evaluation factors.

For example, under the experience factor, BSUI only challenges the Navy's determination that BSUI's firm experience

in construction work of similar size and complexity was limited, by arguing that the RFP did not provide for the consideration of BSUI's lack of specific experience. Where, as here, a solicitation lists experience as an evaluation factor, an agency may reasonably consider an offeror's specific experience since such specific experience is intrinsically related to and encompassed by a general experience factor. See Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133. Also, BSUI does not challenge the agency's evaluation conclusions that BSUI's proposed key management and technical personnel lacked adequate experience or that its list of on-going projects and completed projects did not demonstrate a history of satisfactory performance.

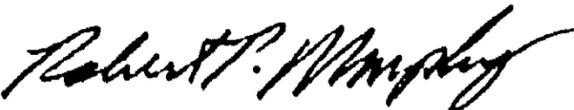
Similarly, BSUI only challenges one of the assessed deficiencies in BSUI's proposal under the subcontractor support capability factor. Specifically, BSUI contends that the agency erred in finding that it had not stated a plan to manage subcontractors and asserts that such a plan can be found in BSUI's proposal submissions under the quality control and purchasing plan subfactors to the management ability evaluation factor. BSUI does not contend that it provided a plan for minimizing its response times, as requested by the RFP.

Since BSUI did not address all of the identified deficiencies in its proposal under the experience and subcontractor support capability factors nor assert that these other deficiencies were insignificant, we see no basis to question the agency's determination that BSUI's proposal was deficient under these factors. While it is true, as BSUI asserts, that BSUI provided some information concerning its plans to manage its subcontractors in its proposal response to another evaluation factor, we do not find that this demonstrates the unreasonableness of the agency's evaluation of BSUI's proposal under the subcontractor support capability factor, particularly given BSUI's failure to provide any plan for minimizing its response times.

In conclusion, we find from our review of the record that the agency reasonably determined that BSUI's proposal contained numerous deficiencies under each of the stated evaluation factors and that the correction of these deficiencies, taken in the aggregate, would require major revisions to BSUI's proposal for it to become acceptable. Accordingly, the Navy's elimination of BSUI's lowest

technically rated and highest priced proposal from the competitive range was proper. See TSM Corp., B-252362.2, July 12, 1993, 93-2 CPD ¶ ____.

The protest is denied.


for James F. Hinchman
General Counsel