



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

103543

Decision

Matter of: A Travel Passport, Inc.; Global Express Travel Services, Inc.

File: B-255383.2; B-255383.3; B-255383.4

Date: March 3, 1994

Donald Thomas for A Travel Passport, Inc., and Dolores Strait for Global Express Travel Services, the protesters. Timothy A. Beyland, Department of the Air Force, for the agency.

Daniel Schwimer, Esq., and Robert G. Crystal, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency had a reasonable basis for finding awardee's price proposal to be realistic and reasonable for award of travel agent contract.
2. Protester failed to show improper agency motives in adding requirement to solicitation and giving all offerors an opportunity to submit a new round of best and final offers.
3. Record does not support protester's contention that it was entitled to extra years of experience considered in the technical evaluation because agency considered all experience of which it was made aware and evaluated experience of all offerors and their staff under same criteria.
4. Protester is not an interested party under the General Accounting Office's Bid Protest Regulations to challenge the award to another offeror where the protester would not be in line for award even if its protest were sustained.

DECISION

A Travel Passport, Inc. (Travel Passport) and Global Express Travel Services protest the award of a contract by the Department of the Air Force, MacDill Air Force Base,

Florida, to Bay Area Travel, Inc. under request for proposals (RFP) No. F08602-92-R-0001 for official and unofficial travel services.

We deny Travel Passport's protest, and deny in part and dismiss in part Global's protest.

The RFP sought a contractor to run a commercial travel office, using its own personnel and equipment. It required offerors to submit the following, in descending order of importance, for evaluation: (a) a technical proposal; (b) a discount fee proposal (official travel), describing the procedures and internal controls the contractor would use to ensure the government received the agreed upon discount rate; (c) a concession fee proposal (unofficial travel), describing the procedures and controls the contractor would use to ensure the government was paid the agreed upon concession fee; and (d) a price proposal (discount fee and concession fee), showing the fees and how they are supported.

The RFP stated that the contract would be awarded "to the offeror whose proposal is determined to be the most advantageous to the [g]overnment." It further stated that "[c]ost will be considered secondary to the overall rating assigned to the Technical, Discount Fee, and Concession Fee Proposals in determining the best value to the [g]overnment," and that "[c]ost (Discount and Concession Fees) will not be rated or scored but will be evaluated [for completeness, realism, and reasonableness.]" The RFP defined realism to mean that the proposed fees were "compatible with the scope of work, i.e., neither excessive nor insufficient for the effort to be performed and [they] are not materially unbalanced," and reasonableness was defined to mean that the fees were fully justified and documented. The RFP stated that a cost realism analysis would be performed to the extent necessary to support the offeror's price proposal.

The agency received 16 proposals by the due date of May 15, 1992. These proposals were evaluated according to the Air Force's color coded rating system. Under this system, an exceptional technical proposal was to be given a blue rating, an acceptable proposal a green rating, a marginal proposal a yellow rating, and an unacceptable proposal a red rating.

Five firms, including Bay Area and both protesters, were determined to be in the competitive range. While Bay Area was included in the competitive range, it had only received a yellow rating based on its initial proposal (after initially receiving a green rating), primarily due to

informational deficiencies in its proposal. Travel Passport received a blue rating and Global a green rating.

The five firms submitted a first round of best and final offers (BAFO) in December 1992. Technical proposals were then reevaluated. This time Bay Area received a blue rating based on its BAFO, along with Travel Passport and one other firm. Global's green rating remained unchanged.

In March 1993, the Headquarters Air Combat Command, Langley Air Force Base, Virginia, issued a directive to all bases in the command requiring all travel office contracts to include the Government Travel System (GTS), which calls for the use of the government's authorized credit card to pay for official travel. Since award had not been made, the RFP issuing office notified the firms in the competitive range in April 1993, that the RFP had been amended to include this requirement, and they were asked to submit a second round of BAFOs. The second round of BAFOs were submitted in August 1993.

The results of the technical evaluation of the second round of BAFOs were the same as for the first round. The evaluators then compared the three technically exceptional proposals (blue rated proposals) under the next two factors listed in the RFP, the discount fee for official travel and the concession fee for unofficial travel.

Bay Area offered a 5.3 percent discount fee and a 7.0 percent concession fee for the base year, compared to the fees offered by the other two blue proposals, which ranged from 1.6 to 3.61 percent. Since Bay Area's discount and concession fees were considerably higher than the fees offered by these two blue-rated offerors (as well as the fees offered by the green-rated offerors), its proposal was found to be the most advantageous to the government. After a finding of responsibility by the contracting officer, the agency awarded the contract to Bay Area on September 28, 1993.

TRAVEL PASSPORT

Travel Passport contends that the discount and concession fees proposed by the awardee are unreasonably high and that the agency failed to perform an adequate cost realism analysis to determine whether Bay Area's fees could be justified. It contends that the awardee's offer will result in a negative cash flow, thus reducing the quality of the service provided, and it questions whether the awardee will staff the office at required levels.

In reply, the agency disputes that Bay Area proposed unreasonably high fees. It states that when it issued the RFP, it was expecting to receive offers of at least 4 percent for official travel, based on the 10 percent that is returned to the contractor from the airlines. The evaluators also checked with Langley Air Force Base regarding the fees it was receiving on its travel contract and found that they were comparable to those offered by Bay Area: 7 percent for official travel and 5.4 percent for unofficial travel at Langley.

Concerning unofficial travel, the agency noted that Bay Area had stressed its intent to substantially increase unofficial travel. The agency evaluators felt there was much room for growth in this area. They also noted that the return to the contractor was higher than 10 percent for this category of travel, because of the type of travel and services involved.

In light of the foregoing, the agency concluded that Bay Area's fees of 5.3 percent and 7 percent for official and unofficial travel, respectively, were within the range of reasonableness. Although the protester insists that Bay Area's discount and concession fees are unreasonably high, we have no basis to disagree with the agency's contrary determination.

The protester contends that the agency failed to ensure, as required by the RFP, that Bay Area would be able to perform the contract successfully with the fee structure it proposed. It contends that if the agency had performed a proper cost realism analysis, it would have concluded that Bay Area could not pay the fees it proposed and provide the level of services required without losing money. Under Travel Passport's best case analysis, it believes that Bay Area can not perform this contract as required and make a profit.

Our examination of the record shows that, contrary to the protester's assertion, the agency did consider whether Bay Area could perform under its fee structure. For example, the agency was concerned that Bay Area's labor costs were significantly lower than the other offerors. Bay Area advised the contracting officer that three of the staff were co-owners of the company and would be working for a percentage of the profits and no salary. Based on this advice, the agency concluded that Bay Area would provide the necessary staffing level.

As part of its analysis, the agency evaluators also noted that Bay Area would not incur the expense associated with a computer reservation system because its reservation system

is an equipment cost paid for by potential travel suppliers. Moreover, they noted that Bay Area is a member of a leisure travel consortium that negotiates commission agreements with travel suppliers and provides added commissions to travel agencies. Based on this analysis, they concluded that Bay Area's price proposal was realistic and reasonable.

We have recognized that the contracting agency is in the best position to make a cost realism determination. Our review of an agency's cost realism analysis is therefore limited to determining whether the agency's analysis is reasonably based and not arbitrary. Purvis Sys. Inc., 71 Comp. Gen. 205 (1992), 92-1 CPD ¶ 132. Here, although the protester vigorously disagrees with the agency's analysis of Bay Area's price proposal, we find that the agency evaluators did consider the points raised by the protester but reached different conclusions. We find that the agency's analysis was reasonably based.

Finally, Travel Passport contends that the agency's inclusion of the GTS payment system in the RFP was motivated by the agency's desire to provide financial help to "one or more" of the finalists. This contention is not supported by the record. The record shows that the GTS payment system was included in the RFP in response to a directive from headquarters, and thus the contracting officer was merely doing what it was directed to do. There is no indication that there was any intent to influence the outcome of this procurement.

Travel Passport also raised several other grounds for its protest, in its response to the agency report, that we previously had dismissed as untimely. See Travel Passport, Inc., B-255383.5, Dec. 8, 1993. Having already dismissed them, we will not consider them now. (The primary issue raised was that the awardee used unrealistic international air traffic volume and false commission rates to generate fictitious cash flows in violation of the RFP.) We dismissed those grounds because they had been filed more than 10 days after the protester knew, or should have known, of the basis of its protest. Where a protester initially files a timely protest and later supplements it with new grounds of protest, the new arguments must independently satisfy our timeliness requirements. Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD ¶ 130.

GLOBAL

Global contends that the agency miscalculated its proposal in that it incorrectly evaluated its qualifications. Specifically, it contends that the agency credited it with only

6 years of experience instead of 8 years, and failed to recognize its total of 40 staff years of military and travel experience.

Regarding the first contention, Global's initial technical proposal, submitted in May of 1992, stated that the company has been in business 6 years. It argues that since the award was made in September of 1993, the agency should have given Global credit for 8 years of experience, not 6 years.

The agency states that while the evaluation of proposals was being conducted, it was fully aware of the fact that each offeror's experience had increased due to the passage of time. It states that Global was treated no differently from the other offerors in this respect.

We agree. The agency evaluators were obviously aware of the passage of time since the initial proposals were submitted. If Global had specific relevant experience to offer the agency since submitting its initial proposal, it should have updated its proposal when it submitted its two BAFOs. It is unreasonable for an offeror to expect the agency in its evaluation to give the offeror credit for experience that the offeror has not mentioned in its proposal.

As to Global's contention that it did not receive full credit for years of experience of its staff, the agency states that it evaluated all offerors under the same criteria in accordance with the evaluation factors in the RFP. The agency evaluated years of experience for key management staff and focused on the offeror and the person second in charge. No other offeror's entire staff's experience was combined for comparative purposes. Global was given credit for experience of the owner and the general manager. All other firms were treated similarly. Under these circumstances, we will not substitute our judgment for that of the contracting agency. Federal Env'tl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398.

Furthermore, years of experience was only one of many evaluation factors in the technical proposal. Global received an overall "acceptable" rating, and did not receive an "exceptional" rating in any area.

Global also questions the evaluation of Bay Area's proposal. We will not consider this part of its protest. The agency rated Global's proposal only as "acceptable," while rating proposals of three other firms as "exceptional." Only the firms with "exceptional" proposals were considered for contract award. Global challenges the rating of only one of those three firms. Since we found no basis to reject the

agency's rating of Global, Global would not be in line for award even if we were to sustain its protest. Where the protester would not be in line for an award, even if we were to resolve the protested issues in its favor, the firm generally lacks standing as an interested party. Brackett Aircraft Radio Co.--Recon., B-244831.3, Jan. 31, 1992, 92-1 CPD ¶ 131; Corrugated Inner-Pak Corp., B-233710.2, Mar. 29, 1989, 89-1 CPD ¶ 326. We therefore conclude that Global is not an interested party to challenge the award. See id.

Travel Passport's protest is denied, and Global's protest is denied in part and dismissed in part.

Seymour Gross

for
Robert P. Murphy
Acting General Counsel