



Comptroller General
of the United States

Washington, D.C. 20548

H. Gorczycki

535224

Decision

Matter of: Triangle Maintenance Corporation
File: B-255953
Date: April 19, 1994

Timothy P. Healy for the protester.
Terrence J. Tychan, Department of Health & Human Services,
for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency had no duty to inform a high-priced offeror during discussions that its price was high where it was neither excessive nor unreasonable.

DECISION

Triangle Maintenance Corporation protests the rejection of its proposal under request for proposals (RFP) No. SSA-RFP-93-1393 issued by the Department of Health and Human Services (HHS), Social Security Administration, for combined facilities management services at the Mid-Atlantic Program Service Center, Philadelphia, Pennsylvania.

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

HHS issued the RFP on February 26, 1993. The RFP, as amended, contemplated award of a fixed-price award fee contract for 1 year with 4 option years to the offeror with the lowest-priced, technically acceptable proposal.

HHS received eight proposals by the closing date of April 29. The agency performed a price analysis and determined that all of the proposed prices were reasonable and competitive. HHS evaluated the technical proposals and determined that all were technically unacceptable, with four proposals, including Triangle's, being susceptible to being made acceptable. HHS included these four firms' proposals in the competitive range. Triangle's price was the highest of the competitive range proposals.

HHS conducted discussions with, and requested best and final offers (BAFO) from, the competitive range offerors and received BAFOs by August 4. After evaluating BAFOs, HHS

059825/151531

determined that Triangle's BAFO was technically unacceptable because it had not eliminated the deficiencies present in its initial proposal, despite HHS' discussions on these points. HHS therefore eliminated Triangle's proposal from the competitive range. Triangle's BAFO price was the third highest of the BAFOs submitted.

Triangle protested to our Office, after learning that HHS had rejected its BAFO as technically unacceptable. Triangle alleged that the agency's evaluation was unreasonable and/or that the agency had not conducted meaningful discussions with Triangle. HHS' report on the protest explained its evaluation of initial proposals and BAFOs, the content of discussions with Triangle, and the basis for finding Triangle's BAFO technically unacceptable and eliminating it from the competitive range. In addition, the report asserted that Triangle's proposal was not in line for award in any case because it was significantly higher priced than two of the BAFOs. Triangle responded to HHS' report by generally asserting that it had corrected the identified deficiencies and its BAFO should therefore have been considered acceptable; Triangle also alleged that HHS had never informed Triangle that its price was high and, therefore, HHS failed to conduct meaningful discussions on this point.

In negotiated procurements, agencies are required to conduct meaningful discussions with offerors in the competitive range. Arthur Anderson & Co., 71 Comp. Gen. 233 (1992), 92-1 CPD ¶ 168. In order for discussions to be meaningful, an agency generally must point out deficiencies, uncertainties, or suspected mistakes in a proposal. See Federal Acquisition Regulation (FAR) § 15.610(c). Although an agency may inform an offeror during discussions that its cost or price is considered to be too high or unrealistic where otherwise appropriate, FAR § 15.610(e)(3)(ii), the government has no responsibility to inform an offeror that its cost or price is high where the offeror's cost or price is not considered excessive or unreasonable. Weeks Marine, Inc./Bean Dredging Corp., a Joint Venture, 69 Comp. Gen. 108 (1989), 89-2 CPD ¶ 505; Applied Remote Technology, Inc., B-250475, Jan. 22, 1993, 93-1 CPD ¶ 58; Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34.

The agency performed a price analysis of the proposals and determined that Triangle's price was competitive and not unreasonable for its proposed approach. Nothing in the record casts doubt on the reasonableness of this agency determination, such that the agency had a duty to advise Triangle that its price was high. See Weeks Marine, Inc./Bean Dredging Corp., a Joint Venture, *supra*; Applied Remote Technology, Inc., *supra*. In any event, Triangle has not alleged that it could have and/or would have lowered

its price sufficiently to be in line for award if it was given the opportunity to revise its proposal with knowledge that the price was considered high. Therefore, we deny Triangle's protest concerning the agency's failure to conduct price discussions.

Triangle is not an interested party eligible to protest the agency's technical evaluation of its proposal as unacceptable or the agency's discussion on this matter. In this regard, the RFP provided for award to the lowest-priced, technically acceptable offeror, such that Triangle's higher-priced proposal would not be in line for award, even if its protest of the agency's technical evaluation were sustained.¹ See 4 C.F.R. § 21.0(a) (1993); ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Therefore, we will not consider Triangle's protest of the technical evaluation of its proposal.

The protest is denied in part and dismissed in part.


Robert P. Murphy
Acting General Counsel

¹The contract was awarded to Halifax Corporation at a total price of \$17,177,480. This price is nearly \$2 million lower than Triangle's total evaluated BAFO price of \$19,168,944.