



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Realest Association

File: B-257845.2

Date: February 1, 1995

DECISION

American Realest Association (ARA) protests the rejection of its proposal, and the award of a contract to Black's Guide, Inc., under General Services Administration (GSA) solicitation No. KECF-94-0016, for services related to providing, maintaining, and updating commercial real estate market survey software.

We dismiss the protest.

Award was to be made to the low, technically acceptable, responsible offeror, with pass/fail scores to be assigned proposals for technical approach, management, corporate experience, and personnel. The total price--the sum of all proposed fixed unit prices for all the required services and supplies--was to be evaluated for reasonableness.

ARA and other offerors submitted proposals by the revised June 30, 1994, closing date. On July 5, ARA filed a protest with our Office challenging the specification and arguing that insufficient proposal preparation time had been provided. During a July 6 telephone conversation, GSA explained that the procurement was being conducted on a negotiated basis, and that discussions with offerors therefore were permitted, and agreed to answer questions ARA might have about the procurement. Following this telephone conversation, ARA withdrew its protest. Thereafter, by letter dated July 11, ARA submitted to GSA a list of 47 questions about the procurement, and also asked that GSA furnish it the text of all provisions incorporated in the solicitation by reference.

Following receipt of ARA's questions, the agency performed an initial review of the proposals and developed a list of 25 clarification questions for ARA. ARA timely responded and, following evaluation of ARA's proposal in light of this response, GSA determined that ARA's proposal was technically unacceptable under all four evaluation factors. Given this determination and the fact that ARA's 47 questions were found to be either answered in or not relevant to the solicitation, GSA did not send ARA its responses to the

questions. On September 29, GSA notified ARA and the other offerors of the intended award to Black's Guide.¹

ARA protests that GSA improperly failed to answer its 47 questions and used a double standard by requiring ARA to answer GSA's 25 questions; this failure violated ARA's agreement with GSA to withdraw its July 5 protest in consideration for GSA's answering ARA's questions. This argument is without merit. First, we agree with GSA that the 47 questions are either addressed in the solicitation or are not relevant to the solicitation. For example, ARA asked:

" . . . 11. What is the history of the Real Estate Program solicitation. Explain the program from its origin up to the current period, including dates, additional needs, and changes made to the program. . . .

"40. What is both the computer experience and also the real estate experience of all personnel on an individual basis, whom GSA intends to have access to the real estate rental software, either immediately or those individuals who are intended to use the software in the foreseeable future. . . ."

It is not apparent how these questions directly relate to the furnishing of the required software, and ARA does not explain how the answers to them could have affected its proposal. (Indeed, other than requesting a 90-day extension of the period for commenting on the agency's report, which we denied, ARA did not respond to the report.)

There also is no basis for concluding that GSA violated some agreement with ARA. First, we note that, since the closing date for receipt of proposals already had passed on July 5, ARA's protest on that date was untimely and would not have been considered by our Office even had ARA not withdrawn it. See 4 C.F.R. § 21.2(a)(1) (1994).² Further, while GSA concedes that it advised ARA that it would answer questions presented by ARA, GSA states that it agreed to answer, not any and all questions, but only questions relevant to the

¹Black's Guide subsequently was determined to be other than a small business by the Small Business Administration, so award now will be made to another firm.

²In its protest here, ARA reasserts the arguments from its July 5 protest. Since these arguments were untimely when filed in July, they clearly are untimely now, and thus will not be considered.

solicitation. While there appears to have been a misunderstanding by ARA, there simply is no basis for finding improper action in an agency's failure to respond to questions answered by or irrelevant to a solicitation. Finally, it is not clear to us how answers to ARA's questions could have affected its proposal, since ARA did not raise the questions until after submitting its proposal. Given that ARA's proposal ultimately was eliminated from the competitive range, and therefore not included in discussions, the answers to ARA's 47 questions would have served no competitive purpose under this solicitation.

ARA also argues that it improperly was denied "fair solicitation negotiations and consideration." To the extent that ARA means to argue that it should have been included in negotiations, the argument is without merit; only offerors with a proposal in the competitive range are included in negotiations and given an opportunity to submit a best and final offer. Federal Acquisition Regulation §§ 15.609 and 15.611. To the extent ARA believes it improperly was excluded from the competitive range, we consider the argument to have been abandoned. In its report, furnished to ARA, the agency provided a detailed explanation of the reasons why ARA's proposal was deemed technically unacceptable. There is nothing on the face of this explanation suggesting that the agency improperly evaluated ARA's proposal, and as ARA never rebutted the agency's position, we have no basis for questioning the determination that the proposal was unacceptable. Monfort, Inc., B-256706, July 5, 1994, 94-2 CPD ¶ 2.

ARA challenges Black's Guide's ability to perform the contract at its offered price. Not only does this argument concern an affirmative determination of Black's Guide's responsibility, which we will not consider, see 4 C.F.R. § 21.3(m)(5), but since Black's Guide no longer is in line for award due to its large business status, the issue is academic. American Combustion, Inc., B-235397.2, Oct. 13, 1989, 89-2 CPD ¶ 348.

The protest is dismissed.



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