



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Stewart Distributors

File: B-298975

Date: January 17, 2007

James B. Lieber, Esq., and Thomas M. Huber, Esq., Lieber & Hammer, PC, for the protester.

Phillipa L. Anderson, Esq., Dennis Foley, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.

Linda C. Glass, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected proposal for bulk laundry/linen services as technically unacceptable where proposal did not clearly indicate the protester's intention to comply with the solicitation's quality standards.

DECISION

Stewart Distributors protests the rejection of its proposal and the award of a contract to Balfurd, Inc. under request for proposals (RFP) No. 244-06-01362 REV issued by the Department of Veterans Affairs (VA) for bulk laundry/linen services at the VA Medical Center in Pittsburgh, Pennsylvania. Stewart contends that rejection of its proposal was improper.

We deny the protest.

BACKGROUND

The RFP was issued on May 12, 2006 and contemplated award of a fixed-price contract for a 1-year base period and three 1-year option periods. As amended, the RFP provided for a "best value" award. The RFP listed the following evaluation factors--past performance, technical/management approach to performance, personnel, and price--and advised offerors that past performance, technical/management, and personnel, when combined, were significantly more important than price. The RFP also advised offerors that the agency intended to evaluate offers and make award without discussions, but reserved the right to

conduct discussions if the contracting officer determined that to be necessary. RFP at 90.

As noted above, the solicitation sought proposals to provide bulk laundry/linen services for the VA Medical facility in Pittsburgh, Pennsylvania, stating:

Contractor shall furnish all clean linen items, labor, equipment, supervision, management, supplies, soiled linen carts and liners, bulk delivery carts, transportation, and facilities . . . necessary to perform complete and all-inclusive contractor owned/contractor operated bulk laundry linens services for the Department of Veterans Affairs. . . . All services are to be performed in accordance with standard industry practices and quality control measures and all requirements herein.

RFP at 4.

More specifically, with regard to quality of performance, the solicitation established an “Acceptable Quality Level” or “AQL” for each of various aspects of contract performance; in this regard, the RFP expressly defined AQL as “the maximum percent of defective work, or number of defects that will be allowed before work is considered unsatisfactory.” RFP at 31, 50-51. Specifically, under the heading “Performance Requirements Summary,” the solicitation contained a table that identified various quality standards applicable to various contract requirements. RFP at 50-51. For example, the solicitation provided that the performance standard for cleaning laundry was: “Laundry is clean, dry, free of lint and odor, spots and stains removed.” RFP at 50. Directly next to this standard the solicitation provided that the “AQL Maximum Allowable Degree of Deviation” is “5% per month.” Id. Similarly, with regard to damaged items, the solicitation established the following standard: “Laundered items are not physically damaged due to improper processing or carelessness.” Directly next to this standard, the solicitation provided that the “AQL Maximum Allowable Degree of Deviation” for this requirement was “2.5% per month.” RFP at 51.

Four proposals, including one submitted by Stewart, were submitted by the August 4, 2006 closing time. In its proposal, Stewart provided a table under the heading “Quality Standards,” in which Stewart listed various performance standards to be applied to particular items to be laundered. Agency Report (AR), Tab 15, Stewart Technical Proposal,¹ at 37-39. With regard to the solicitation requirements related to stained and damaged items, Stewart’s proposal contained quality standards that varied from, and were less restrictive than, the standards established in the solicitation. For example, with regard to items identified as “Patient Gown,”

¹ Stewart’s technical proposal was prepared by its proposed subcontractor, Clean Textile Systems, Inc. (CleanCare).

“Scrub,” “Mattress Pad,” “Bibs,” “Adult Briefs,” and “Bath Mats,” Stewart’s proposal stated: “No dark stains. Not more than one light stain, no larger than a quarter.”² Id.

Similarly, with regard to damage to (that is, holes in) “Pad/Briefs” and “Adult Briefs,” Stewart’s proposal stated, “Cotton side: Not more than one hole, no larger than a dime. No holes on the barrier side.” Id. at 37-39. Similarly, with regard to the item identified as “Thermo,” Stewart’s proposal stated, “Not more than 2 holes, each no bigger than a quarter,” id. at 38, and with regard to “Bath Mats,” Stewart’s proposal stated, “Not more than one hole, no larger than a dime.” Id. at 39.

Upon review and evaluation of Stewart’s proposal, the agency concluded that it did not offer to meet the performance requirements specified in the solicitation; accordingly, the agency rejected Stewart’s proposal as technically unacceptable.³ Upon evaluation of the proposal submitted by Balfurd, next in line for award under the RFP award procedures, the agency determined that it contained no deficiencies, proposed to meet the solicitation’s performance standards, and that its price was fair and reasonable. Consequently, a contract was awarded to Balfurd in the amount of \$4,932,864. Stewart subsequently received a debriefing, after which, this protest was filed.

DISCUSSION

Stewart argues that the agency misinterpreted its proposal and unreasonably determined that it was technically unacceptable. We disagree.

Where a protester challenges an agency’s evaluation of a proposal’s technical acceptability, our review is limited to considering whether the evaluation is reasonable and consistent with the terms of the RFP and applicable procurement statutes and regulations. National Shower Express, Inc.; Rickaby Fire Support, B-293970, B-293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. As with any evaluation review, our chief concern is whether the record supports the agency’s conclusions. Innovative Logistics Techniques, Inc., B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144 at 9. Clearly stated RFP technical requirements are considered material to the needs of the government, and a proposal that fails to conform to such material terms is

² Similarly, with regard to an item identified as “Thermo,” Stewart’s proposal stated: “No dark stains. No more than two light stains, no larger than 3 inches.” Id. at 38. With regard to an item identified as “Pad/Briefs,” Stewart’s proposal stated: “Not more than one light stain, no larger than a quarter.” Id.

³ The agency similarly concluded that two other offerors’ proposals failed to comply with the solicitation’s performance requirements and, consistent with the action taken regarding Stewart’s proposal, rejected those proposals as technically unacceptable.

technically unacceptable and may not form the basis for award. National Shower Express, Inc.; Rickaby Fire Support, supra. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

Here, as discussed above, the solicitation defined the acceptable level of performance in terms of the maximum percent of defective work that will be allowed. RFP, Performance Work Statement, at 31. More specifically, the solicitation provided that “[l]aundry is clean, dry, free of lint and odor, spots and stains removed,” and that the acceptable level of deviation from this standard was limited to “5% per month.” Similarly, with regard to damaged items, the solicitation’s “Performance Standard” specified that, “[l]aundered items are not physically damaged due to improper processing or carelessness,” and that the acceptable deviation from this standard was limited to “2.5% per month.” RFP at 50-51.

The agency concluded that, contrary to the solicitation’s specified requirements, Stewart’s proposal effectively provided that virtually every laundered item could permissibly contain holes and stains⁴—provided the holes were limited in size and number to the alternative standards that Stewart identified, and provided the stains were similarly limited in size and number and/or were sufficiently “light.” Accordingly, the agency concluded that Stewart’s proposal did not offer to meet the solicitation’s stated performance requirements.

Stewart complains that the agency should have interpreted the quality standards identified in its proposal as applying only to the portion of items that the solicitation permitted to deviate from the stated requirements—that is, 5 percent per month with regard to stained items and 2.5 percent per month with regard to damaged items. However, nothing in its proposal advised the agency regarding this purported interpretation and intent to comply with the solicitation’s specified quality standards.⁵

⁴ With regard to a very limited number of items—specifically, items identified as “Bath Towels,” “Wash cloth,” and “Baby”—Stewart’s proposal stated “No stains” and “No holes.” Id. at 37-38.

⁵ Stewart complains that its proposal contained a blanket assertion that it would abide by the terms and conditions of the RFP; however such statement is insufficient to supersede the specific conflicting provisions of its proposal, discussed above. See, e.g., National Shower Express, Inc.; Rickaby Fire Support, supra, (offeror is responsible for including sufficient information in its proposal to establish compliance with solicitation requirements, and blanket statements of compliance are insufficient to meet this obligation).

Here, Stewart's inclusion of quality standards that conflicted with the solicitation's stated standards—even if viewed in a light most favorable to Stewart—created an ambiguity regarding Stewart's intention to comply with the RFP's requirements. Since the agency selected Balfurd's proposal for award without discussions, as contemplated by the solicitation, the agency properly rejected Stewart's proposal as technically unacceptable for failure to clearly meet the solicitation's stated requirements. On the record here, we have no basis to question the agency's actions.

Alternatively, Stewart protests that, because two other offerors' proposals were similarly determined to be technically unacceptable, the agency had an obligation to open discussions.⁶ We disagree.

Where, as here, an RFP provides for award on the basis of initial proposals without discussions, an agency may make award without discussions, unless discussions are determined to be necessary. 41 U.S.C. § 253b(d)(1)(B) (2000). An agency may dispense with discussions where there is a reasonable basis to conclude that the proposal of the intended awardee represents the best overall value to the government. See Sierra Military Health Servs., Inc.; Aetna Gov't Health Plans, B-292780 et al., Dec. 5, 2003, 2004 CPD ¶ 55 at 6-7 n.5.

Here, as discussed above, the solicitation specifically defined the performance standards and the maximum allowable degree of deviation from those standards; accordingly, there was no ambiguity with regard to the solicitation's requirements.⁷ Further, the record shows that the agency clearly had a reasonable basis to conclude that Balfurd's proposal represented the best overall value to the government. That is, Balfurd submitted a low-priced, technically acceptable proposal, that contained no deficiencies requiring discussions. Accordingly, on this record, the agency had no obligation to conduct discussions.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁶ One of the other rejected proposals was submitted by CleanCare, Stewart's proposed subcontractor, on CleanCare's own behalf.

⁷ To the extent Stewart's protest is challenging the solicitation provisions as being overly restrictive, its protest is not timely filed. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2006).