



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## REDACTED DECISION

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

**Matter of:** Este Medical Services, Inc.

**File:** B-261845.2

**Date:** September 29, 1995

D. Lee Roberts, Jr., Esq., Ware, Snow, Fogel, Jackson & Greene, for the protester. Maj. Michael J. O'Farrell, Jr., and Roy L. Masengale, Esq., Department of the Army, for the agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Contracting agency reasonably eliminated the protester's proposal from the competitive range, although it was rated as susceptible to being made acceptable, and even though the protester's proposal had previously been included in the competitive range, where technical weakness concerning the protester's experience as reflected in its revised proposal, which was submitted after discussions, caused it to receive the [deleted] lowest technical rating, such that it no longer had a reasonable chance of being selected for award.

2. Contracting agencies are not obligated to afford all-encompassing discussions or to discuss every element of a competitive range proposal; agencies are only required to lead offerors into the areas of their proposals considered deficient.

## DECISION

Este Medical Services, Inc. protests the exclusion of its proposal from the competitive range under request for proposal (RFP) No. DADA13-94-R-0019, issued by the Department of the Army for nursing services at two health facilities.

We deny the protest.

The RFP, issued on July 29, 1994, contemplated the award of a fixed-price indefinite quantity contract (based on estimated hours of nursing services required) for a base period and two 1-year options. The RFP stated that award would be made to a single offeror who submitted the "best overall proposal" considering the stated evaluation factors. The RFP contained two evaluation factors: (1) technical/quality; and (2) price, which was of lesser importance. The technical/quality factor had two

subfactors, which were of equal importance, experience/capability/availability<sup>1</sup> and understanding the requirement.<sup>2</sup> Finally, the RFP stated that price would be evaluated but not scored.

Seventeen proposals were received by September 12, 1994, the amended date for receipt of initial proposals. The proposals were evaluated by a source selection evaluation board (SSEB); the contracting officer was designated the source selection official (SSO). As relevant here, the SSEB's initial evaluation resulted in Este being ranked [deleted] of [deleted] offerors. Specifically, the SSEB expressed concern about Este's experience because it was unclear whether the firm ever held a contract in its own name. Further, while Este in its proposal referred to a relationship with International Health Services (IHS), an experienced company, the proposal did not show a joint venture relationship or any other legally binding commitment by IHS to support Este in performing this contract.<sup>3</sup> Nevertheless, the contracting officer included all offers, including Este's, in the competitive range.

On April 24, 1995, the agency, among other things, asked Este the following discussion question:

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<sup>1</sup>Concerning the offerors' experience, the RFP stated that offers would only be considered from firms which are regularly established in the business solicited and can establish evidence of their reliability and the ability of personnel directly employed or supervised by them to render prompt and satisfactory service. The RFP further stated that "[t]he offeror shall have had not less than three years successful experience in recruiting direct health care provider personnel. Ability to meet the foregoing experience requirements and the adequacy of the information submitted will be considered in determining the competitive range."

<sup>2</sup>During the evaluation, the agency scored the technical merits of the proposals. The maximum possible technical score was 1,000 points. The scores were described in the agency's source selection evaluation plan as follows:  
(1) exceptional ([deleted] - 1,000 points); (2) good ([deleted] - [deleted]);  
(3) acceptable ([deleted] - [deleted]); (4) susceptible ([deleted] - [deleted]); and  
(5) unacceptable (0 - [deleted]).

<sup>3</sup>Este merely stated in its proposal that it would "utilize the resources, experience, and capabilities of IHS, its mentor, in providing services [to the Army]. IHS, owned by Este principal Charles V. Rice, is an experienced [contractor]. For purposes of this proposal, however, all experience which is drawn from either owner in common, or IHS, will be referred to as Este experience or capability."

"[Provide d]etails regarding any contract that [Este] has held in its own company name. You are advised that since [Este] is the offeror and if a contract were awarded, Este would be legally bound to perform. Any agreements between the prime contractor and other companies is an autonomous agreement. Therefore, [Este] must be found to be capable of performance on its own merit/previous experience."

Revised proposals were received. Este stated in its revised proposal that Este was established in 1994 and that it has owners in "common" with IHS and that IHS was its "mentor." In addition, Este stated that it was awarded only one contract in the past to provide Fort Knox the services of two midwives. The agency states that it was unable to find evidence that Este met the minimum experience requirements or that Este had established a subcontracting arrangement with IHS or obtained any other legally binding commitment from the firm to assist Este in the performance of this contract. The protester in fact stated in its proposal that IHS and Este were separate legal entities. The agency also concluded that Este had provided only one previous reference in its own name (to provide two midwives), which was not "considered comparable to this [current] requirement in terms of size and scope."<sup>4</sup>

After this second evaluation by the agency following discussions, Este was rated [deleted] of [deleted] firms.<sup>5</sup> The contracting officer established a competitive range of two proposals; two other firms withdrew their offers. Thirteen offerors, including Este, were excluded. This protest followed.

In its protest, Este does not directly challenge the agency's substantive findings about its lack of experience to meet the RFP requirements. Rather, Este argues several procedural flaws which allegedly occurred during evaluation. Specifically, Este challenges the adequacy and accuracy of the 1,000-point scoring system and

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<sup>4</sup>The record shows that other firms had experience exceeding the minimum requirements of the RFP.

<sup>5</sup>Concerning price, the agency evaluated Este's price as approximately [deleted] million. Revised prices ranged from [deleted] million to [deleted] million. The agency's independent government estimate was [deleted] million. Contrary to the protester's arguments in its comments on the agency report, the agency analyzed and evaluated prices, and the contracting officer was fully aware of Este's price in making his determination to exclude the firm from competition. There is no evidence to show that the agency "ignored the lower proposed cost of Este." As discussed below, despite its generally lower price, Este's technical proposal was reasonably determined by the agency to have no reasonable chance for award principally because of its inadequate experience record.

the various numerical "cut-offs" for exceptional, good, acceptable, susceptible and unacceptable; alleges that the agency failed to adequately document the deficiencies it found in Este's technical proposal; and alleges that the agency failed to conduct meaningful discussions because the agency's written discussion question about its experience was not sufficiently clear and was misleading.

Our examination of an agency's decision to exclude a proposal from the competitive range begins with the agency's evaluation of proposals. Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244. In reviewing an agency's technical evaluation, we will not reevaluate the proposal but will examine the record of the agency's evaluation to ensure that it was reasonable and in accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Id. The competitive range consists of all proposals that have a reasonable chance of being selected for award, generally including proposals that are technically acceptable or reasonably susceptible of being made acceptable through discussions. Intown Properties, Inc., B-250392, Jan. 28, 1993, 93-1 CPD ¶ 73. However, even a technically acceptable proposal may be eliminated by comparing the relative ranking and merit of the higher-rated proposals to the proposal in question; thus, an agency may eliminate a technically acceptable proposal based on a relative evaluation and ranking of the merits of proposals. See Coe-Truman Technologies, Inc., B-257480, Sept. 12, 1994, 94-2 CPD ¶ 136. If the agency's evaluation of proposals is reasonable, there is nothing improper in an agency's making more than one competitive range determination and dropping a firm from further consideration. Labat-Anderson Inc., supra.

Because the protester has not submitted any substantive evidence rebutting the findings of the agency that Este's revised proposal, even after discussions, was seriously flawed and materially inferior with respect to experience both objectively and on a relative basis with respect to higher-rated proposals, we conclude that the agency's technical evaluation and findings concerning this deficiency were reasonable. We think the agency reasonably decided that Este's experience, which consisted of a single contract for two midwives, failed to meet the minimum requirements of the RFP. Further, since these findings concerning Este's experience were in narrative form, we find irrelevant the arguments of the protester concerning the adequacy and accuracy of the numerical point system generally used by the agency during the evaluation. Even if we were to conclude that the point scoring was incorrect the narrative evaluation which found Este's experience deficient provides a rational basis for the rejection of Este's proposal. Moreover, since the contracting officer was provided by the evaluators, through their narrative, with sufficient information concerning Este's experience on which to rationally conclude that the firm's proposal was deficient and relatively inferior, we find no merit to the protester's argument that the agency failed to adequately document the protester's deficient experience.

Finally, concerning the protester's allegation that the agency failed to conduct meaningful discussions, agencies are not obligated to afford all-encompassing discussions or discuss every element of a competitive range proposal; agencies are only required to lead offerors into the areas of their proposals considered deficient. See donald clark Assocs., B-253387, Sept. 15, 1993, 93-2 CPD ¶ 168. Here, while the agency's discussion question did not specifically advise the protester to proceed to form a joint venture, teaming or subcontracting relationship with IHS, as the protester argues the agency should have, we think the agency's discussion question, quoted above, adequately led the firm into the area of its experience, which the discussion question clearly conveyed to be a deficiency. Given the specific experience requirements of this RFP, and the discussion question, the protester was reasonably placed on notice that the evidence of its experience in its revised proposal was not adequate to meet solicitation requirements.

The protest is denied.

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of the United States