



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cobra Technologies, Inc.

File: B-272041; B-272041.2

Date: August 20, 1996

Jacob B. Pompan, Esq., Gerald H. Werfel, Esq., and Neil H. Ruttenberg, Esq., Pompan, Ruffner & Werfel, for the protester.
Ronald B. Vogt, Esq., and Stuart Young, Esq., DynCorp, and Paul Shnitzer, Esq., Crowell & Moring, for DynCorp, an intervenor.
Terrence J. Tychan, Department of Health and Human Services, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's proposal was properly excluded from the competitive range where the agency reasonably concluded that there were a multitude of significant deficiencies in the proposal which made it technically unacceptable as submitted and major revisions would have been required to make it acceptable.

DECISION

Cobra Technologies, Inc. protests the exclusion of its proposal from the competitive range and the subsequent award of a contract to DynCorp under request for proposals (RFP) No. 223-96-9616, issued by the Food and Drug Administration (FDA) for operational maintenance and support services at federal buildings in Washington, D.C. Cobra primarily argues that the agency improperly evaluated its proposal.

We deny the protest.

The successful offeror will provide operational and maintenance support services at a federal building containing laboratory and office space. This building is unique in that it has a one-pass heating, ventilation, and air conditioning system; glass plumbing; and various independent air conditioning, compressed air, vacuum, and a variety of other laboratory delivery systems. Toxicology, pharmacology, microbiology, and nutritional studies that have a direct impact on the food, drug, and cosmetic chain in the country are performed on a daily basis in this building. The contractor will also perform construction and utility work at another nearby federal building.

Under the RFP, technical proposals were to be of primary consideration in the evaluation, but price could become primary if the offerors' technical competence were considered approximately the same. Offerors were required to meet three minimum mandatory requirements:

1. Experience in the operation and maintenance of support equipment that sustains acceptable temperature and humidity levels in a laboratory research facility;
2. Experience in operating and maintaining a "one-pass" (100% outside air) air distribution system, and the need to maintain positive/negative balance relationships in a laboratory research environment; and
3. Experience in operating and maintaining a research facility through the use of automated data processing management systems.

Proposals meeting these requirements would be evaluated under four technical merit factors and their subfactors: ability to operate and maintain a research facility (30 percent); corporate experience and qualifications (25 percent); past performance (25 percent); and key personnel experience (20 percent).

Three firms submitted timely offers, which were subject to a preliminary evaluation by each member of the agency's Project Advisory Group (PAG). The PAG subsequently convened to discuss and finalize the technical evaluation results.¹ The record reflects that all three offerors satisfied the minimum mandatory requirements and received final technical evaluation scores. DynCorp's proposal received a rating of 86.25, and Cobra's proposal received a rating of 61.²

In its memorandum to the contracting officer, the PAG listed each proposal's strengths and weaknesses and stated that the proposals of Cobra and the third offeror were so inferior and deficient in relation to the evaluation criteria that they would have to be rewritten to be considered technically acceptable. After reviewing the individual evaluation rating forms, the score summary, and the PAG's narrative, the contract specialist recommended the exclusion of both proposals from the competitive range, and the contracting officer concurred. DynCorp was awarded the contract, and Cobra filed this protest.

¹While Cobra insinuates that this second evaluation was improper, both the PAG's instructions and the agency's acquisition manual provide for a preliminary evaluation followed by a consensus evaluation. In any event, the overriding concern in these matters is whether the final scores assigned accurately reflect the relative merits of the proposals. See Household Data Servs., Inc., B-259238.2, Apr. 26, 1995, 95-1 CPD ¶ 281.

²The third offeror's proposal, which received a rating of 62.75, is not at issue here.

In reviewing competitive range determinations, our Office will not independently reevaluate proposals; rather, we will examine the record to ensure that the evaluation is reasonable and in accordance with the solicitation's evaluation criteria. Mobility Sys. and Equip. Co., B-261072, Aug. 8, 1995, 95-2 CPD ¶ 66. A protester's disagreement with the agency's technical judgment does not show that such judgment was unreasonable. Id.; Micronics, Inc., B-228404, Feb. 23, 1988, 88-1 CPD ¶ 185. Even where a competitive range is reduced to one, as here, we will not disturb the determination absent a clear showing that it was unreasonable. Engineering & Computation, Inc., B-258728, Jan. 31, 1995, 95-1 CPD ¶ 155. As discussed below, our review of the record confirms that the evaluation here was reasonable.

The most important evaluation factor assessed the offerors' demonstrated "ability to operate and maintain a research facility." Cobra's proposal was downgraded under the first subfactor, "ability to implement, maintain, and update all necessary maintenance and repair programs," because the PAG believed that its tool and equipment listing was insufficiently detailed to show that it understood the performance work statement (PWS) requirements. The firm's proposal included the general statement that the firm would furnish "all necessary equipment," and proposed to supply a van outfitted with tools. The PAG was unpersuaded that one van would be able to furnish enough tools and equipment needed for 12 maintenance workers to maintain a research facility. In addition, the PAG was concerned because Cobra's proposal did not mention such items as a torch set, electrical testing devices, power tools for field use, or drain cleaning equipment, all of which are needed to execute certain PWS requirements.

Cobra contends that "provision of a comprehensive tool list" is not an evaluation criterion here, and that the FDA's evaluation thus was improper. We disagree.

Solicitations must identify all significant factors and any significant subfactors that will be considered in awarding the contract, and the evaluation of proposals must be based on the factors set forth in the solicitation. Federal Acquisition Regulation §15.605(d) (FAC 90-31). In performing the evaluation, however, the agency may take into account specific, albeit not expressly identified, matters that are logically encompassed by the stated evaluation criteria. See Laidlaw Env'tl. Servs. (GS), Inc., B-271903, Aug. 6, 1996, 96-2 CPD ¶ __. Here, not only is the assessment of a tool and equipment list logically encompassed in the review of an offeror's ability to implement, maintain, and update maintenance and repair programs, but section L of the solicitation explicitly instructs offerors to describe the facilities and equipment available for the conduct of the proposed work. Thus, we view the tool list as encompassed by the criterion, see Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16, and the agency's downgrading of Cobra's proposal for

its negligible discussion of this matter was proper. Bioqual, Inc., B-259732.2; B-259732.3, May 15, 1995, 95-1 CPD ¶ 243.³

Cobra's proposal also was downgraded under the second and final subfactor, which required offerors to "provide all steps and procedures required" to respond to three specified emergency situations. The FDA believed that Cobra's descriptions as to two of these situations lacked the steps and procedures requested. While Cobra's initial protest asserted that its proposal contained sufficient such information, the agency's rebuttal of this claim is fully supported by a reading of the firm's proposal, and Cobra, in its comments, provides us no basis to disagree with the agency. Accordingly, we see no basis to question the evaluation in this area.

The second evaluation factor required offerors to demonstrate "[c]orporate ability indicated by corporate resources, background, and experience in performing similar work." Offerors were to provide at least three references, including a contact and a description of the work performed.

Cobra's proposal listed more than 70 projects and contacts for each. Instead of describing the work it had performed under these projects, as required by the solicitation, Cobra simply "invited" the agency to call its customers, leaving an open question whether the firm had performed "similar work." Notwithstanding this omission, the agency ascertained from other parts of the proposal that Cobra's experience included one contract to maintain a research laboratory facility, which it had been performing for 5 months. The evaluators contacted several individuals at that facility and received generally favorable recommendations. While the evaluators gave Cobra's proposal a strength for having some experience with maintaining a research laboratory facility and for having received favorable references, they viewed the limited nature of this experience as a weakness and downgraded Cobra's proposal accordingly.

In her statement filed in response to the protest, the contracting officer stated that "[t]he minimum mandatory requirements [in the RFP] . . . define the term 'performing similar work.'" Seizing upon this statement, Cobra argues that this

³We agree with Cobra that the agency appears to have misquoted a passage of its proposal which discusses the tool list but, in our view, the totality of the evaluation comments made with respect to this issue supports the rating Cobra received. In a related matter, Cobra incorrectly contends that the FDA should have downgraded DynCorp's proposal because it also provided general statements as to its tool and equipment list. DynCorp's proposal contains general statements in this regard, but also includes a figure in which it lists each and every tool and piece of equipment it anticipates using to perform this contract.

definition is unreasonably narrow since the work requirements are primarily those found in any large building and are not specifically related to those at issue in the minimum mandatory requirements.⁴

In our view, the contracting officer's statement does not equate "similar work" to any specific components of the minimum mandatory requirements, but to the operation and maintenance of a research laboratory facility, the work at issue here. That statement is immediately followed by the clarifying statement, "[t]he only laboratory experience set forth in the Cobra proposal was the Brooklyn lab." More important, the contemporaneous evaluation documents, which evidence no participation by the contracting officer, show that the evaluators' concern was with Cobra's lack of experience in operating and maintaining a research laboratory facility--the "similar work."

In any event, where a solicitation indicates that experience will be evaluated, the procuring agency properly may consider an offeror's specific experience with the subject matter of the procurement. Human Resource Sys., Inc.; Health Staffers, Inc., B-262254.3 et al., Dec. 21, 1995, 96-1 CPD ¶ 35; FMS Corp., B-255191, Feb. 8, 1994, 94-1 CPD ¶ 182. As the solicitation indicates that the work here is for maintaining a building in which nearly half the space is categorized as laboratory space, and where that laboratory space is subject to particular requirements so important as to be encompassed in the minimum mandatory requirements, we do not find the agency's definition of "similar work" to be too narrow. In fact, Cobra's own proposal states that its corporate experience in the performance of the types of services at issue was gained "primarily" through the efforts on its sole contract to operate and maintain a research laboratory facility. It is implicit in an experience evaluation that a proposal may be downgraded depending on the agency's assessment of the relevance and amount of an offeror's experience in relation to the experience it reasonably determines is necessary for successful performance. Human Resource Sys., Inc.; Health Staffers, Inc., supra.

Cobra alternatively asserts that the FDA could have relied upon the experience of its proposed key personnel in evaluating its corporate experience, citing our decision in Energy and Resource Consultants, Inc., B-205636, Sept. 22, 1982, 82-2 CPD ¶ 258. In that case, however, the corporate experience requirement was

⁴Cobra also uses this statement as the basis for its supplemental protest, in which it argues that the agency improperly jettisoned the technical merit factors and established the minimum mandatory requirements as a "special standard of responsibility." This argument is baseless. The record is clear that the agency comparatively evaluated the proposals under the technical merit factors. Moreover, as discussed below, we find that this reference to the minimum mandatory requirements is entirely proper.

phrased so broadly that it could encompass the experience of individual employees. Here, the criterion was explicitly limited to corporate experience, experience which cannot be fulfilled by an individual or individuals. See Environmental Health Research & Testing, Inc., B-237208, Feb. 9, 1990, 90-1 CPD ¶ 169. As a result, the agency properly declined to consider such experience in its evaluation. Precision Elevator, Inc., B-259375, Mar. 20, 1995, 95-1 CPD ¶ 152.

Finally, the past performance factor contemplated evaluating the contractor's performance on "completed and on-going projects that are similar to the requirements specified in the performance work statement." As above, the evaluators believed that Cobra's experience in operating and maintaining a research laboratory facility was a strength, but downgraded the proposal because that experience was so limited.

While Cobra complains that the agency improperly limited its consideration of its past performance to the firm's research laboratory contract, the evaluation factor specifically states that firms will be evaluated on the basis of their "performance on similar projects." As discussed above, we do not think the agency's definition of "similar projects" was unreasonable, nor do we believe that the agency's decision to give Cobra a lower rating in light of its limited experience with "similar projects" was unreasonable. In any event, the agency did contact several references with respect to Cobra's other contracts, and even an evaluator who stated that he "could not rate" the firm's past performance due to its lack of research laboratory experience gave the firm 20 of 25 possible points here, evidence that Cobra received credit for its related experience.

Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, it may properly be excluded from the competitive range irrespective of its lower offered price. See A.G. Crook Co., B-255230, Feb. 16, 1994, 94-1 CPD ¶ 118. There is no obligation for the agency to conduct discussions with an offeror whose proposal has been properly excluded from the competitive range. *Id.* Here, as discussed above, the agency reasonably determined Cobra's proposal to be technically unacceptable without major revisions. Accordingly, the subsequent elimination of its proposal from the competitive range without conducting discussions was unobjectionable. International Resources Corp., B-259992, Apr. 14, 1995, 95-1 CPD ¶ 200.

The protest is denied.

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