



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: EastCo Building Services, Inc.

File: B-275334; B-275334.2

Date: February 10, 1997

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Lee W. Crook, Esq., and Emily C. Hewitt, Esq., General Services Administration, for the agency.

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DIGEST

1. Protest that agency improperly applied undisclosed evaluation criteria--whether prior contracts had been of 3-year duration and whether prior buildings serviced were at least 500,000 square feet in size--is denied where solicitation reasonably put offerors on notice of these considerations would be included in the evaluation.
2. Protest that agency improperly downgraded protester's proposal based on its mechanical application of an undisclosed estimate of full-time equivalents (FTE) rather than considering protester's overall unique approach to cost efficient staffing is denied where, although agency used its staffing estimates as a starting point for evaluation, agency fully considered and reasonably evaluated protester's staffing approach.
3. Discussions with protester were adequate where agency advised protester that its proposed staffing for mechanical requirements was inadequate, and discussions with awardee were virtually identical.
4. Agency's post-best and final offer communications with awardee constituted discussions, since the awardee revised its staffing and price in response, but this does not provide basis for sustaining protest, since there is no showing of competitive prejudice to protester.

DECISION

EastCo Building Services, Inc. protests the General Services Administration's (GSA) award of a contract to TECOM under request for proposals (RFP) No. GS-079-96-

DRC-0110, for commercial facility management services at seven federal buildings in Houston and Galveston, Texas.

We deny the protest.

The RFP, issued on May 30, 1996, contemplated the award of a 4-year--1 base year with 3 option years--fixed-price contract to furnish all supplies and services for commercial facility management, operations and maintenance, and custodial services for the seven buildings. The RFP required offerors to demonstrate that within the last 5 years, they had satisfactorily performed all the commercial facility management services required by the RFP, under one or more contracts. Offerors satisfying this minimum requirement were to have their proposals evaluated based on the following technical evaluation factors: (1) past performance/experience on similar projects and (2) staffing and work schedules, which were of equal importance and more important than (3) management controls. The staffing and work schedules factor consisted of three subfactors: (a) productive and supervisory operation, maintenance, and repair staff, work schedules, and subcontracting list (hereinafter the "mechanical" subfactor); (b) productive and supervisory custodial staffing, work schedules and subcontracting list; and (c) proposed facility management staff and work schedules. Price, which was less important than the technical factors, was to be evaluated for realism, overall value, and reasonableness. Award was to be made to the responsible offeror whose offer conformed to the RFP and was most advantageous to the government.

Eleven proposals were received, five of which--not including EastCo's and TECOM's--were included in the competitive range. After EastCo filed a protest in our Office (B-273019), however, GSA reevaluated the proposals and included both EastCo's and TECOM's in the competitive range. Following written technical and price discussions with the offerors, revised proposals were requested, received, and evaluated as follows:

	Price	Score (7-point scale)
TECOM	\$24,143,226.47 ¹	5.25
EastCo	\$23,521,203.25	3.8
Offeror A	[deleted]	[deleted]
Offeror B	[deleted]	[deleted]
Offeror C	[deleted]	[deleted]
Offeror D	[deleted]	[deleted]
Offeror E	[deleted]	[deleted]

The agency determined in conducting its price/technical tradeoff that TECOM's lower price made its proposal the best value compared to the higher technically rated proposals, and that, although EastCo's price was low, its lowest-rated proposal was so technically deficient--"especially in key factors"--that it was last among the seven proposals, and not in line for award.

EastCo challenges numerous aspects of the evaluation. We find all of EastCo's arguments to be without merit, and discuss several of them below.

PAST PERFORMANCE/EXPERIENCE ON SIMILAR PROJECTS

EastCo argues that the agency improperly applied--and downgraded its proposal under the past performance/experience on similar projects factor based on--two undisclosed criteria: whether previously performed contracts were of at least a 3-year duration, and whether the areas of the buildings maintained under prior contracts had been at least 500,000 square feet.

This argument is without merit. The RFP required offerors to list prior contracts, which would be evaluated for past performance/experience, and to indicate for each contract (among other things) the type of facility, gross square footage, services performed, and duration. EastCo and the other offerors were on notice from these requirements that, in judging whether a prior contract would be deemed a "similar project," the agency would consider the similarity of the contracts to the RFP requirement in these areas, and reading these requirements together with the rest of the RFP should have put EastCo on notice of the agency's intent to consider these

¹In response to EastCo's protest, the agency discovered a mathematical error in its calculations with regard to TECOM's price such that its price should be \$238,127.56 less than stated above, or \$23,759,330.81.

specific elements of its listed contracts. See ORI Servs. Corp., B-261225, July 28, 1995, 95-2 CPD ¶ 55. In this regard, since a 3-year contract term is similar to the potential duration of the contract under the RFP (1 year with 3 option years), we think offerors reasonably could anticipate that experience performing contracts of such a duration would be viewed favorably in the evaluation. Similarly, since the RFP showed that the areas of 4 of the 7 buildings to be maintained were about or in excess of 500,000 square feet, EastCo and other offerors should have been aware that the agency would more favorably evaluate experience operating and maintaining areas in this size range.² In any case, we note that, while EastCo's proposal was downgraded somewhat based on a lack of certain experience under 3-year contracts, or in similarly sized areas, the agency's greatest concern was that EastCo lacked experience performing commercial facility management services, as required by the RFP.

MECHANICAL STAFFING

EastCo argues that GSA improperly downgraded its proposal under the mechanical subfactor (under the staffing and work schedules factor) based on its mechanical application of an undisclosed estimate that [deleted] full-time equivalents (FTE)--[deleted]--were necessary for adequate performance. [Deleted].

This argument also is without merit. While GSA used its staffing estimates as a starting point for the evaluation, it fully considered EastCo's staffing approach. GSA downgraded EastCo's proposed staffing--[deleted]--not merely because it deviated from the agency's staffing plan, but because the staffing was viewed as inadequate on its own merits. For example, although the RFP specifically stated that offerors should propose both productive and supervisory staffing, EastCo's proposal included no supervisors for the mechanical work.³ In addition, noting that 3 full-time mechanics--including numerous overtime hours and use of subcontractors--currently were required to maintain one of the seven buildings, GSA concluded that [deleted] mechanics simply could not perform all required work, which included preventive maintenance, operation, maintenance and repair of a

²In any case, EastCo does not indicate--and it is not apparent--how it was prejudiced by these considerations; it does not state, for example, that it omitted 3-year duration contracts from its list of prior projects and would have included them had it been aware of this consideration.

³The agency required supervisors at the buildings to ensure the successful operation and maintenance of the buildings/equipment (supervisors are skilled in several mechanical trades), and to handle personnel problems, tenant relations, and quality control.

significant amount of extremely complex technical equipment, including a computerized energy management system.⁴

GSA also concluded that there was nothing in EastCo's proposal showing that its proposed staffing was adequate in light of its overall approach. For example, GSA found that EastCo's offer of [deleted] did not address or mitigate the general understaffing problem, since the RFP specifically required the contractor to respond to emergency service calls at all times, including normal working hours, weekends, and holidays. Similarly, while EastCo proposed using [deleted], nothing in the proposal explained how their use would expand the workforce sufficiently to eliminate the agency's concerns. Finally, EastCo's proposal did not contain any information regarding [deleted] of its personnel. We conclude that GSA reasonably downgraded EastCo's proposal under this subfactor.

DISCUSSIONS

EastCo maintains that discussions concerning its proposal were inadequate because GSA failed to specifically inform the firm that its mechanical staffing needed fewer helpers and more mechanics. EastCo maintains that, in contrast, TECOM was presented with more specific questions in this area.

In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are within the competitive range, Federal Acquisition Regulation (FAR) § 15.610(b) (FAC 90-31), and the competitive range must include all proposals that have a reasonable chance of being selected for award. FAR § 15.609(a); Northrop Worldwide Aircraft Servs., Inc., B-262181, Oct. 27, 1995, 95-2 CPD ¶ 196. Discussions with offerors whose proposals are in the competitive range must be meaningful--the offerors must be advised of proposal deficiencies. FAR § 15.610(c)(2) and (5). However, there is no requirement that discussions be all-encompassing; agencies need only lead offerors into the areas of their proposals considered deficient. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149.

GSA met this standard. Specifically, the agency advised EastCo that "[s]taffing for mechanical requirements appears to be inadequate," and that it should review and clarify the staffing. Since the RFP contained detailed specifications covering all work required to be performed, this advice provided EastCo with adequate notice of the area of the deficiency. The agency was not required to be more specific than this. Further, EastCo's argument that the questions provided to TECOM regarding its staffing were more specific is without merit; GSA's advice to TECOM in this

⁴In contrast, TECOM offered [deleted] resulting in a score of 5.25 (compared to EastCo's score of 2) under this subfactor.

area--that its "[s]taffing for mechanical requirements appears to be slightly inadequate," and to review its staffing--was virtually identical to that given EastCo.

EastCo argues that GSA labeled and treated the written discussion questions as clarifications--which are for the sole purpose of allowing an offeror to eliminate minor irregularities, informalities or clerical mistakes--rather than discussions, in only allowing the firm to explain or substantiate the information in its proposal, and not to add new information. Specifically, EastCo complains that GSA excluded from review EastCo's response to the clarifications under the management controls factor on the basis that it was new information.

This argument is without merit. Notwithstanding its use of the term "clarifications," GSA permitted offerors to revise their proposals in response to the questions presented. The questions therefore constituted discussions. FAR § 15.601. As for the management controls factor, portions of EastCo's initial proposal in this area were ignored because EastCo's proposal exceeded the RFP's stated 75-page limit; the agency removed the last 8 pages of EastCo's initial proposal, which concerned management controls. See U.S. Envtl. & Indus., Inc., B-257349, July 28, 1994, 94-2 CPD ¶ 51 (offerors are bound to comply with an RFP's page limitation). GSA informed EastCo in two separate clarification letters that these pages "were removed and not evaluated due to the page limitations," but that EastCo could include new information by revising the information within the 75 pages of EastCo's proposal; EastCo did in fact include new information under the management control portion of its proposal by revising the first 75 pages of its BAFO, and the agency evaluated this information. There thus is no basis for finding that the agency's use of the term "clarifications" somehow precluded EastCo from revising its proposal as it desired after discussions.

POST-BAFO DISCUSSIONS

EastCo argues that GSA held improper post-BAFO discussions with TECOM, because it allowed only TECOM to revise its BAFO by adding [deleted].

The record shows that, after the consensus evaluation was completed on September 18, but before the source selection decision had been made, the agency determined that TECOM's [deleted], and suspected TECOM may have made a mistake in calculating its price. The SSEB therefore telephoned TECOM on September 23 and requested that the firm either verify or revise its price. (The record contains a spreadsheet showing that the contracting officer recalculated, for purposes of comparison, the labor hours and the payroll taxes in the government estimate in order to determine whether mistakes had been made, either in TECOM's calculations or in the entering of figures for certain line items.) The SSEB again telephoned TECOM on September 24, and suggested (as indicated in a contemporaneous telephone record of a message left on TECOM's answering

machine) that perhaps TECOM had not considered that some of the buildings were historical, and had older equipment, and that some work would have to be performed in secured areas, all of which could increase performance time. In response, by letter of September 25, TECOM submitted a revised BAFO adding [deleted]. GSA raised TECOM's evaluation score by .15 points, for a new total of 5.25 points.

Discussions occur when an offeror is given an opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. FAR § 15.601; HFS, Inc., B-248204.2, Sept. 18, 1992, 92-2 CPD ¶ 188. Since TECOM revised its proposal, and the agency evaluated the revisions, discussions occurred and should have been held with all competitive range offerors.

However, prejudice is an element of every viable protest, and where none is shown, our Office will not sustain a protest, even where the agency's actions may have been improper. Amcare Medical Servs., Inc., B-271595, July 11, 1996, 96-2 CPD ¶ 10. There is no showing of prejudice here.

EastCo alleges that it would have made appropriate changes to its proposal that would have significantly improved it had the agency pointed out, in further detailed discussions, the specific deficiencies and weaknesses remaining in its proposal. However, the agency, upon reopening discussions with EastCo, would have been under no obligation to be any more specific regarding its concerns than it was in conducting initial discussions. As indicated above, the level of detail provided by the agency in its prior round of discussions satisfied the requirement for meaningful discussions, and the record reflects that the agency intended to limit discussions as it did.⁵ There is no reason to believe, and EastCo does not assert, that it would have made extensive proposal changes in response to a mere reiteration of the agency's concerns.

EastCo asserts that it would be entitled to more detailed discussions if negotiations were reopened because TECOM's post-BAFO discussions were detailed. The record does not support this assertion. As indicated, the record shows that the agency advised TECOM only that its [deleted] and asked whether TECOM had considered the age of the building and equipment in determining the time required to perform.

⁵The agency states that it did not engage in extensive, specific discussions because doing so would undermine its ability to determine how well offerors understood the requirements--for example, EastCo's failure to propose mechanical supervisors suggested a lack of understanding in this area.

We do not see any reason why these discussions with TECOM⁶ would require extensive specific discussions with EastCo if negotiations were reopened with all offerors. Accordingly, there is no basis for concluding that EastCo was in any way competitively prejudiced by the post-BAFO communications with TECOM. See IT Corp., B-258636 et al., Feb. 10, 1995, 95-1 CPD ¶ 78 at 12-13.

DOCUMENTATION OF TRADEOFF

EastCo asserts that the price/technical tradeoff decision is not adequately documented, and that in fact there was no proper basis for selecting TECOM's higher-priced, higher technically rated proposal for award. This argument is without merit. The contracting officer was provided with all evaluation materials, scores and prices, and used this information in performing an explicit tradeoff among all competitive range proposals. The contracting officer documented his tradeoff decision, concluding, in sum, that TECOM's lower price offset higher-rated proposals' technical advantages, and that EastCo's proposal's significant deficiencies in key areas essentially eliminated EastCo's offer from being selected vis-a-vis the other offers. This tradeoff was consistent with the RFP, and no more extensive documentation was required.⁷

The protest is denied.

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⁶TECOM's proposal was considered acceptable at all times, and was rated significantly technically superior to EastCo's before the post-BAFO communication. The addition of [deleted] increased TECOM's score by only [deleted] points, and the [deleted] clearly did not benefit TECOM in the evaluation.

⁷EastCo also asserts that the analysis of TECOM's offered price was improper. However, since EastCo's proposal was evaluated as last in line for award, and we have found nothing objectionable in the evaluation, one of the other competitive range offerors, not EastCo, would be in line for award if this protest ground were sustained. Under our Bid Protest Regulations, a protester is not an interested party for purposes of challenging an award under these circumstances. Bid Protest Regulations, section 21.0(a), 61 Fed. Reg. 39039, 39042 (1996) (to be codified at 4 C.F.R. § 21.0(a)); Cyber Digital, Inc., B-270107, Jan. 24, 1996, 96-1 CPD ¶ 20.