



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Aliron International, Inc.

File: B-285048.2

Date: August 3, 2000

Kenneth A. Martin, Esq., Martin & Adams, for the protester.
Merilee D. Rosenberg, Esq., and Philip Kaufman, Esq., Department of Veterans Affairs, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging proposal's exclusion from competitive range is denied where range was properly limited to the most highly rated proposals, and protester has not challenged the evaluation or rating of proposals.

DECISION

Aliron International, Inc. protests that the Department of Veterans Affairs (VA) improperly excluded its proposal from the competitive range and failed to provide meaningful discussions under request for proposals (RFP) No. 101-03-00, for operation of a comprehensive program of occupational health and wellness for VA and other specified federal agencies.

We deny the protest.

The RFP contained two statements of work (SOW): the first addressed the majority of services, including the treatment of occupational and non-occupational illnesses and injuries, emergency and non-emergency services, an employee assistance program for VA, and other additional services, SOW I, and the second described the services required to run VA's fitness center. SOW II. The RFP provided that proposals initially would be evaluated to determine whether offerors qualified under a past performance standard, which provided that offerors must have performed similar occupational health services during the past 5 years. RFP at 77. Proposals of offerors that met this standard would then be evaluated on a best value basis under the factors past performance, oral presentation, organizational review and price. Id.

at 77-78. The RFP stated that the government intended to award the contract on the basis of initial proposals, without holding discussions. Id. at 71, 73.

VA received four proposals, including Aliron's, determined that the four offerors were qualified under the past performance factor, and invited all four to make oral presentations. AR at 3. Following the oral presentations, the evaluation panel rated one proposal blue (exceptional), two green (good), and Aliron's yellow (adequate). Id. With respect to Aliron, the panel found that its oral presentation failed to address many areas of SOW I, including treatment of occupational and non-occupational illnesses and injuries, emergency medical care and additional services; Aliron only addressed the employee assistance program for VA, and the VA fitness facility. Id. The panel also found that Aliron had not performed contracts of the same complexity as the one contemplated here. Id. After reviewing the evaluation results, the contracting officer established a competitive range that did not include Aliron's proposal, because of its inadequate oral presentation, the fact that it had less relevant experience than the other offerors, and its high proposed price.¹ Competitive Range Determination at 6.

Aliron maintains that, the facts as reported by the agency notwithstanding, its proposal must in fact have been included in the competitive range, since RFP amendment No. 4 stated that "[o]fferors in the competitive range will be notified to give oral presentations within seven (7) days after closing date of 3-10-2000," RFP amend. 4, at 3, and it was permitted to make an oral presentation. Aliron asserts further that, while VA did ask several discussion questions during the oral presentation, it did not discuss all of the reasons for which its proposal was rejected. Aliron concludes that the agency improperly failed to provide meaningful discussions.²

VA responds that, notwithstanding the language in the amendment, oral presentations were part of the evaluation process, not discussions; that the questions asked during the oral presentations were for clarification only; and that it was not required to engage in discussions with Aliron, since the firm's proposal was excluded from the competition following evaluation of its oral presentation.

¹The contracting officer decided to establish a competitive range and hold discussions--despite the RFP's stated intention to make award without discussions--in order to provide the two offerors whose proposals were rated green an opportunity to improve their proposals, which were lower in cost than the proposal rated blue.

²Discussions are exchanges with offerors that take place after the competitive range is established, and are only held with those offerors included in the competitive range. Federal Acquisition Regulation (FAR) § 15.306(d).

We agree with the agency. While the reference in the amendment to “competitive range offerors” suggested that the competitive range would be established before the oral presentations, considering the RFP as a whole, we think this interpretation is untenable. First, it was clear from the RFP that the oral presentation was part of the proposal--it was to contain the offeror’s “conceptual approach to solving the statement of work,” and was to address “the approach, methodology, and overall plan for accomplishing the statement of work.” RFP at 78. This being the case, the agency could not establish a competitive range--which consists of the “most highly rated proposals,” FAR § 15.306(c)(1)--without first evaluating the oral presentations. Furthermore, the FAR provides that the competitive range is comprised of the most highly rated proposals “[b]ased on the ratings of each proposal against all evaluation criteria.” *Id.* Since oral presentation was one of the evaluation criteria, a competitive range based on evaluation of all criteria could not be established until after the oral presentations. For these reasons, and in the absence of any evidence that Aliron’s proposal was ever included in the competitive range, we conclude that Aliron is incorrect in alleging that it was.

We also find factually unsupported Aliron’s contention that the agency engaged in discussions during the oral presentations. The agency denies that it did anything more during those presentations than seek clarifications of the proposals, and Aliron’s protest--alleging essentially that the questions asked were minor--in fact supports the agency’s position. In Aliron’s words, the agency was “seeking amplification of certain aspects of Aliron’s proposal” at the oral presentation. Protest at 3. These essentially undisputed facts constitute clarifications, not discussions. *See* FAR § 15.306(a)(2).

The ratings provided a reasonable basis for the agency’s determination that Aliron’s proposal was not among the highest-rated following its oral presentation (Aliron does not challenge the agency’s evaluation or ratings of proposals). The agency therefore properly eliminated the firm’s proposal from further consideration at that time, without conducting discussions.

The protest is denied.

Robert P. Murphy
General Counsel