



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Centro Management, Inc.

File: B-286935; B-286935.2

Date: February 26, 2001

Lynn Hawkins Patton, Esq., Ott & Purdy, for the protester.

Col. Michael R. Neds and Maj. John Alumbaugh, Department of the Army, for the agency.

Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation provision setting forth applicability of Randolph-Sheppard Act preference (establishing priority for the blind in the award of contract for cafeteria services) does not establish a requirement that, in addition to being included in the competitive range, in order to receive the statutory selection preference a proposal submitted by a state licensing agency for the blind must be evaluated as virtually equal in price and technical capability to the other competitive range proposals.

DECISION

Centro Management, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAKF11-99-R-1005, issued by the Department of the Army for food services at Fort Polk, and the award of a contract for these services to Louisiana Rehabilitation Services (LRS), a state licensing agency for the blind (SLA). Centro, the incumbent contractor, contends that its proposal was misevaluated and therefore incorrectly excluded from the competitive range, and that the award to LRS is improper because it was based on the agency's misapplication of the RFP provision advising that the solicitation is subject to the exercise of a selection preference under the Randolph-Sheppard Act, 20 U.S.C. § 107-107f (1994) (the Act).

We deny the protest.

It is undisputed that this procurement is for cafeteria services that qualify for application of the selection preference afforded by the Act. Section M.6(a) of the RFP notifies offerors that the solicitation is subject to the Act, and that Army policy

interprets the Act to provide a "selection preference to qualified nominees of [SLAs] who represent clients seeking Defense contracts for so-called 'military cafeteria-style food operations.'" The RFP goes on to state that "[a]pplication of this preference may entitle a qualifying offeror, whose evaluated proposal is included in the agency's competitive range determination, to receive award without further consideration of other equally competitive proposals." RFP § M.6(a), (b).

Five proposals were received by the August 14, 2000 closing date, including Centro's and one submitted by LRS as the SLA representing a qualified nominee joint venture consisting of Breaud Services Inc., a licensed blind vendor, and Cantu Services Inc. Based on its evaluation of the initial proposals, the agency established a competitive range consisting of the LRS proposal and a proposal submitted by KCA Corporation. Centro's proposal was excluded from the competitive range even though it was recognized as offering the lowest price, on the basis that the proposal demonstrated a lack of understanding of the requirement and contained material deficiencies that would require a major or total rewrite to be made competitive. Agency Report (AR), Tab 10, Pre-Negotiation Objective Memorandum, Oct. 18, 2000, at 12-13; AR, Tab 11, Determination of Competitive Range, at 5-6. Because the SLA proposal was included in the competitive range, after conducting discussions the Army determined to make award to the SLA on the basis that it qualified for preference under the Act. AR at 4. After receiving its debriefing, Centro timely filed this protest.

Centro's primary complaint is that the selection of LRS reflects a misapplication by the agency of the preference as set forth in the RFP. In Centro's view, had its proposal been properly evaluated, it would have been included in the competitive range with a higher technical rating than LRS's proposal, and at a significantly lower price.¹ Centro contends that the agency could not properly have selected LRS for

¹ In its initial protest, Centro assumed that its proposal had been included in the competitive range. After learning that this was not the case, Centro timely protested its exclusion. In response to the agency's explanation setting forth the various evaluated material omissions and informational deficiencies in Centro's proposal which formed the basis for the agency's determination that the proposal was technically unacceptable, Centro argued primarily that the agency had knowledge of Centro's successful performance as incumbent, and that this record was sufficient to establish Centro's ability to successfully perform the functions that it failed to address in its proposal. Centro's view that the agency was required to recognize Centro's incumbency as providing an adequate substitute for including required information in its proposal is unpersuasive; an offeror must submit an initial proposal that is adequately written and affirmatively states its merits, or run the risk of having its proposal rejected as technically acceptable where the proposal omits or provides inadequate information addressing fundamental factors. Essex Electro Eng'rs, Inc., B-284149, B-284149.2, Feb. 28, 2000, 2000 CPD ¶ 72 at 6. However, we need not resolve the propriety of the agency's evaluation and exclusion of Centro's

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award based on the RFP's preference language because LRS's higher-priced proposal could not reasonably have been evaluated as substantially equal to Centro's.

As a threshold matter, Centro contends that the agency could not properly have included LRS's proposal in the competitive range or credited the proposal with the statutory preference because, in Centro's view, the SLA nominee consists of a joint venture which does not qualify for preference under the Act. The Act vests authority for administering and overseeing its requirements solely with the Secretary of Education, 20 U.S.C. § 107a (1994). Pursuant to this authority, the Secretary has promulgated comprehensive regulations addressing all aspects of the Act's requirements, including rules governing the relationship between the SLAs and blind vendors in each state, rules for becoming a designated SLA within the meaning of the Act, rules governing the use of nominee agreements by the SLAs, procedures for oversight of the SLAs by the Secretary, and rules governing the relationship between the SLAs and all federal government agencies. 34 C.F.R. part 395 (2000); Mississippi State Dep't of Rehabilitation Servs., B-250783.8, Sept. 7, 1994, 94-2 CPD ¶ 99 at 3. Because Congress has vested exclusive oversight and decision-making authority with the Secretary of Education, which encompasses an SLA's determination to enter into an agreement with a joint venture as a qualifying nominee under the Act, our Office will not review a protest of that issue. Mississippi State Dept. of Rehabilitation Servs., *supra*, at 4-5. Accordingly, we have no basis to question the agency's inclusion of LRS's proposal in the competitive range as an SLA nominee or the agency's crediting LRS's proposal with the statutory preference.

Centro's contention that the preference called out in the RFP does not provide a basis to award to LRS based on the inclusion of its proposal in the competitive range is without merit. Centro bases its argument on the RFP notice at section M.6(b) that the preference may entitle a qualified offeror whose proposal is included in the competitive range to receive award, focusing on the phrase "without further consideration of other equally competitive proposals" as if it creates a free-standing evaluation criterion. Centro asserts that this language imposes a limitation that, notwithstanding its status as an SLA nominee, LRS was not "entitled to the selection preference [unless] there were only negligible differences in its price, management proposal, and past performance compared to other offerors." Protest at 6. Centro would extend the reach of the RFP phrase to mean that the SLA proposal had to be evaluated as virtually equal to the other selected proposals in order to be included in

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proposal because, even if the proposal should have been included in the competitive range, this would not provide any basis to sustain the protest in view of our conclusion that the agency's application of the preference was unobjectionable. That is to say, once the SLA proposal was properly included in the competitive range, this provided a valid basis for the agency to award the contract to the SLA irrespective of which other proposals were also included.

the competitive range as well as in order to receive the statutory selection preference. Centro opines that LRS's proposal was not "equally competitive" with Centro's, primarily because the price difference was not negligible. Id.

In our view, Centro simply misconstrues the plain meaning of the RFP preference notice. Contrary to Centro's position, the preference language has no relation to the standard for inclusion of an SLA's proposal in the competitive range. The criterion for inclusion is that a proposal must be one of the most highly rated. Federal Acquisition Regulation § 15.306(c). This standard does not contain a requirement that in order to be included in the competitive range a proposal must be equally competitive with all other competitive range proposals or, as Centro posits, contain only negligible differences. The RFP phrase pointed to by Centro does not and could not create any such overly restrictive requirement. Reasonably construed, the RFP notice that application of the preference permits award to a competitive range SLA without further consideration of other equally competitive proposals means simply that the agency may make a determination to award to that SLA without performing a comparison or tradeoff between the SLA proposal and any other competitive range proposals. This is consistent with our Office's view that 34 C.F.R. part 395 contemplates that if a designated SLA's proposal is found to be within the competitive range for the acquisition, award must be made to the SLA. Mississippi State Dep't of Rehabilitation Servs., supra, at 1-2. This interpretation is further supported by applicable Department of Defense regulations which provide that "[if] the [SLA] submits a proposal and it is within the competitive range established by the contracting officer, the contract will be awarded to the [SLA] except [when a specified high-level determination is made by the agency and approved by the Secretary of Education]." 32 C.F.R. § 260.3(g)(1)(ii), (iii) (2000).

The Act as implemented contemplates a preference which permits award to an SLA based on the inclusion of its proposal in the competitive range; the solicitation language in question is plainly consonant with this interpretation and should be so understood. Accordingly, we have no basis to object to the agency's determination that once LRS's proposal was included in the competitive range, appropriate application of the preference warranted a determination to award to LRS.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel