DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

31781

FILE: B-216799 **DATE:** July 25, 1985

MATTER OF: IBI Security Service, Inc.

DIGEST:

1. Allegation that discussions were not meaningful is without merit where they concerned deficient areas of the offeror's proposal and the protester had an opportunity to revise its proposal.

2. Where protester's best and final offer, submitted after the two rounds of discussions, did not sufficiently address deficiencies, the agency may but is not required to reopen negotiations and allow the protester another opportunity to revise its proposal.

3. Agency concerns that 1) offeror would not have necessary staff or facility before commencement of contract performance and 2) key employees were only temporarily available are reasonable where protester's best and final offer merely offers to comply with requirements without providing plans for their accomplishment.

4. A protest alleging that in evaluating proposals agency gave a competitive advantage to offerors with a local staff and office is without merit since any competitive advantage did not result from preferential or unfair treatment by the government.

IBI Security Service, Inc. protests the award of a contract to Argenbright, Inc. under request for proposals (RFP) No. 85-01(N) issued by the Department of Health and Human Services. The contract covers security guard services at three facilities of the Centers for Disease Control (CDC) in Atlanta, Georgia. IBI contends that the agency did not adequately inform the firm of alleged technical deficiencies in its proposal during discussions, and that the agency did not evaluate its technical proposal reasonably.

We deny the protest.

CDC requested offers to provide security services for a 1-year period and for 4 option years, with performance to begin October 1, 1984. The RFP provided that, in evaluating offers, cost/price would be given the same weight as the technical criteria. The latter, listed in descending order of importance, were (1) personnel, (2) experience and corporate capability, (3) organization plan, and (4) detailed work plan.

CDC received 10 proposals in response to the solicitation. After point scoring each, it determined that only Argenbright and IBI were within the competitive range. Following discussions and evaluation of revised proposals, CDC conducted a second round of discussions with the firms, with best and final offers due September 21.

The technical evaluation panel gave the final Argenbright technical proposal a higher score (92.2 points) than the IBI proposal (64 points). Argenbright proposed an aggregate price for the basic contract period and four options of $3,081,329, while IBI proposed $2,778,940. CDC assigned 100 points to IBI's low offer and assigned Argenbright's offer a percentage of IBI's score equal to IBI's price divided by Argenbright's price. Argenbright's combined price and technical score was 182.2 and IBI's was 164. Based upon these scores, CDC awarded a contract to Argenbright.

IBI questions the agency's evaluation on two grounds. First, IBI contends that CDC did not conduct meaningful discussions by failing to apprise the firm of deficiencies, uncertainties, and omissions in its proposal and did not provide it with an opportunity to revise its proposal and cure "minor informalities and deviations" in its best and final offer. The protester also challenges the agency's conclusions about the technical merits of the proposal.

Meaningful discussions, either oral or written, are generally required in negotiated procurements. For discussions to be meaningful, the contracting agency must furnish offerors information concerning the deficiencies of proposals and give them an opportunity for revision. Federal Acquisition Regulation, 48 C.F.R. § 15.610(c) (1984). The content and extent of discussions necessary to satisfy the requirement for meaningful discussions are matters primarily for determination by the contracting

agency, whose judgment we will not disturb unless it is without a reasonable basis. Trellclean, U.S.A., Inc. B-213227.2, June 25, 1984, 84-1 CPD ¶ 661. Requests for clarification or amplification or other statements made during oral discussions that lead offerors into areas of their proposals that are unclear generally are sufficient to satisfy the requirement to alert offerors to deficiencies in their proposals. Health Management Systems, B-200775, Apr. 3, 1981, 81-1 CPD ¶ 255.

IBI does not identify any deficiencies, uncertainties, or omissions that contracting officials failed to raise in discussions. In response to each deficiency discussed in a post-award briefing conducted by CDC, the protester argues not that CDC failed to discuss its concerns, but that IBI's response was not properly evaluated. We have reviewed the evaluation record, and for the reasons indicated below, we conclude that the firm was adequately apprised of deficiencies, uncertainties, and omissions that CDC found in its proposal.

CDC gave IBI its lowest relative score for its proposed detailed work plan. The agency believes that IBI failed to provide a plan tailored to CDC's Clifton Road facility, the largest and most complex of the facilities for which security services are required. During the first discussions with IBI, CDC asked the firm to furnish a detailed work plan and told IBI that the operational and training material in its proposal was too general and not sufficiently related to the types of facilities maintained by CDC. CDC also gave IBI relatively low scores for personnel and organization. In the second round of discussions, CDC raised its concerns in these areas, questioning IBI about its proposal to provide only temporary key personnel and about the firm's ability to hire sufficient guards before October 1. It also asked where and when an Atlanta office, required by the solicitation for contract administration purposes, would be established. After these discussions, CDC gave IBI an opportunity to revise its proposal. Thus, we believe that CDC sufficiently informed IBI of its concerns about the proposal and provided a reasonable opportunity to submit revisions.

IBI seems to argue that after receiving IBI's best and final offer, the agency should have given IBI a third opportunity to revise its proposal. However, an agency is not required to help an offeror along through a series of negotiations so as to improve its technical rating until it

equals that of other offerors. Stewart & Stevenson Services, Inc., B-213949, Sept. 10, 1984, 84-2 CPD ¶ 268. While agencies may reopen negotiations after receipt of best and final offers, there is no legal requirement that they do so. Louis Berger & Associates, Inc., B-208502, Mar. 1, 1983, 83-1 CPD ¶ 195. CDC was under no obligation, after receipt of IBI's best and final offer, to notify IBI of its continued concern or to reopen negotiations.

IBI additionally challenges the reasonableness of several major concerns of CDC which resulted in relatively low scores for IBI's proposed organizational plan and personnel. In considering this portion of IBI's protest, it is not our function to reevaluate IBI's technical proposal. The determination of the government's needs and the best method of accommodating those needs is primarily the responsibility of the procuring agency. In assessing the relative desirability of proposals and determining which offer should be accepted for award, contracting officers enjoy a reasonable range of discretion. Our Office will not question such a determination unless there is a clear showing of unreasonableness, abuse of discretion, or a violation of the procurement statutes or regulations. Louis Berger & Associates, Inc., B-208502, supra, 83-1 CPD ¶ 195.

Specifically, IBI questions CDC's determination that its proposal was deficient because it did not describe how the firm planned to hire security guards in Atlanta or establish a local office. While the proposal stated that IBI would receive local assistance in locating, interviewing, and training personnel, the source of the assistance was not identified and details of the hiring plan were not given. Similarly, IBI stated that an Atlanta office would be established, without providing any details such as the proposed location. IBI argues that to require more of an offeror from another area of the country is unreasonable and gives unfair advantage to Atlanta firms.

Our review of the procurement record discloses that the protester's proposal was not considered deficient solely because IBI had not already hired guards or established an Atlanta office. Rather, evaluators were concerned about the ability of the protester to employ a security force and establish a local office within a few weeks, since no details regarding those areas were given in the protester's proposal and performance was to begin on October 1. The RFP clearly stated that proposals would

be judged on how the offeror planned to organize, staff, and manage the project. We believe that CDC was reasonable in considering IBI's proposal deficient for merely offering to perform the requirements rather than explaining the firm's proposed technical approach. Moreover, CDC's treatment of IBI's proposal did not give an unfair competitive advantage to local firms. Agencies are not required to attempt to equalize competition to compensate for the experience, resources, or skills that one offeror has obtained in the course of performing a prior contract or because of one offeror's own particular circumstances. See Telos Computing, Inc., 57 Comp. Gen. 370, (1978), 78-1 CPD ¶ 235, and cases cited therein. The test is whether the competitive advantage enjoyed by a particular firm is the result of a preference or unfair action by the government. ENSEC Service Corp., 55 Comp. Gen. 656 (1976), 76-1 CPD ¶ 54. Here, there is no evidence that the alleged competitive advantage enjoyed by the awardee because it already had an office and employees in the locality was the result of a preference or unfair action by the government.

The protester claims that CDC unfairly awarded the contract to a firm whose proposal suffered deficiencies similar to those of IBI's proposal. IBI asserts that Argenbright did not have all required radios and a four-wheel drive truck on hand until well after award. While the awardee may have been delayed in providing the new equipment ordered specifically for the CDC contract, we have no evidence other than IBI's bare assertion that necessary equipment was not provided by Argenbright pending receipt of new radios and a four-wheel drive truck. Moreover, Argenbright's proposal described in detail the radios and vehicles that it intended to obtain and provide under the contract. Based on Argenbright's representations, CDC had no basis to question the firm's ability to provide the necessary equipment. We therefore find that the agency was not unreasonable in its treatment of Argenbright's proposal in this respect.

IBI also questions CDC's concern that IBI did not designate a permanent full-time, on-site supervisor. IBI stated in its proposal that its supervisor and his assistant would stay for the month of October to complete the contract transition. Obviously, the agency was reasonable in giving IBI's proposal a relatively low score for the personnel criteria when the individuals being evaluated would only be available for 1 month. The protester now contends that the firm had no intention of replacing its key personnel. However, the firm's best and

final offer conveyed the opposite intention. We believe that CDC was reasonable in considering the IBI proposal to be deficient in this respect.

Finally, IBI argues that award should have been made to it because it offered the lowest price. In negotiated procurements such as this one, unless the solicitation so specifies, there is no requirement that award be made on the basis of the lowest price. The procuring agency has the discretion to select a highly rated technical proposal instead of a lower rated, lower price proposal if doing so is in the best interest of the government and consistent with the evaluation scheme set forth in the RFP, so long as the record shows that there was a rational basis for the selection decision. Louis Berger & Associates, Inc., B-208502, supra, 83-1 CPD ¶ 195.

Here, we found no basis to question CDC's evaluation of IBI's technical proposal. Argenbright's final technical score was considerably higher than IBI's, and outweighed the higher score IBI received for its lower price. The agency justified award to Argenbright based on the firm's combined technical/cost scores, giving each factor equal weight as specified in the solicitation. Under the circumstances, we find that there was a rational basis for CDC's decision to award the contract to the higher-priced, higher-scored Argenbright.

Although not raised by the protester, we note that the contracting officer apparently has not justified his use of negotiation procedures in this small business set-aside procurement. Small business set-asides are a form of negotiation which have been justified under the exception to formal advertising for contracts which are in the public interest during a period of national emergency. See 41 U.S.C. § 252(c)(1) (1982) and the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.201(b)(1)(ii) (1984). Even though set-asides are technically negotiated procurements (because competition is restricted), the FAR provisions in effect for this procurement required that these set-asides be conducted in accordance with formal advertising procedures known as Small Business Restricted Advertising whenever possible, 48 C.F.R. § 19.502-4, with the result that agencies have been required to justify the use of conventional negotiation procedures in small business set-asides. See Nationwide Building Maintenance, Inc., 56 Comp. Gen 556 (1977), 77-1 CPD ¶ 281.

Since this matter was not raised by the protester, and since the preference for the use of Small Business Restricted Advertising has been deleted from the new regulations implementing the Competition in Contracting Act of 1984, 41 U.S.C.A. § 253 (West Supp. 1985), see FAR, § 19.502-4 (Federal Acquisition Circular 84-5, effective April 1, 1985), we will not object to the use of negotiation procedures here.

The protest is denied.

IBI requests reimbursement for the costs of preparing its proposal. However, such costs can only be recovered if the government has acted arbitrarily or capriciously with respect to the proposal. See Health Management Systems, B-200775, supra, 81-1 CPD ¶ 255. In view of our denial of the protest, there is no basis to award such costs.

for Harry R. Van Cleve
General Counsel