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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sterling Services Incorporated
File: B-232578
Date: November 23, 1988

DIGEST

1. Determination whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Allegation that agency's decision to exclude the protester's proposal was improper is denied where agency's technical evaluation was consistent with the solicitation's provisions and had a reasonable basis.
2. Allegation that agency was required to disclose in the solicitation a manning standard developed by the agency evaluators to assess whether proposed personnel were adequate is denied, since the standard was developed based on the work load revealed in the solicitation and merely reflected the evaluators' judgment concerning the minimum manning required to perform the work.

DECISION

Sterling Services Incorporated protests the Air Force's exclusion of its proposal from the competitive range under request for proposals (RFP) No. F34650-88-R-0161 for the operation of a telephone switchboard at Tinker Air Force Base, Oklahoma. Sterling contends that the agency's evaluation of its proposal was unreasonable and inconsistent with the solicitation's evaluation criteria.

We deny the protest.

The RFP was issued as a modified two-step procurement on May 19, 1988, with a closing date for receipt of initial proposals of July 1, 1988. The RFP advised offerors that separate technical and cost proposals should be submitted simultaneously, and that cost proposals would only be considered once the agency had determined that an offeror's technical proposal was acceptable. The RFP also stated that

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a technical evaluation team would evaluate proposals on the basis of the following elements: production, quality, and management. Offerors were cautioned to submit proposals that would be acceptable without additional explanation or information, since a final determination regarding a proposal's acceptability might be made solely on the basis of the proposal as submitted without discussions. The RFP further provided that award would be made on the basis of the lowest priced technically acceptable proposal.

The Air Force received nine timely proposals. Five of these, including Sterling's, were found technically unacceptable and were thus excluded from the competitive range. Sterling's low technical score, which resulted in its proposal's exclusion, was solely based on the agency's determination that there was a significant shortfall in the total man-hours Sterling had proposed.

Sterling protested to the Air Force that its proposal should have been within the competitive range, based on its price, the firm's experience, and a comparison with the current contract. The protester contended that the standards used for evaluating proposals must not have reflected the requirements established in the Performance Work Statement. The Air Force denied Sterling's agency-level protest on the basis that Sterling's proposal had not received the requisite number of points during the initial technical evaluation to be included in the competitive range. The agency advised Sterling that its proposal had been found significantly deficient in the area of manning, and pointed out that manning is of utmost importance in a labor-intensive service contract. Sterling's protest to our Office followed. No award has been made under the solicitation.

Sterling maintains that its proposal should have been included in the competitive range. In support of this assertion, the protester points out that its price (\$208,857) was very close to the amount being paid for the current contract (\$225,449) and that since all offerors were required to comply with the Department of Labor wage determination included in the solicitation, the current staffing level could not be significantly below the level Sterling had proposed. Sterling includes calculations showing that the variation between its own price and the current contract price is less than the annual cost of employing one operator. Sterling also argues that predetermined evaluation standards that were not included in the RFP should not have been used in evaluating proposals, apparently objecting to the absence of a manning-level standard in the Performance Work Statement.

The evaluation of technical proposals and the resulting determination of whether an offeror is in the competitive range is primarily the responsibility of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Accordingly, our Office does not make an independent evaluation of the merits of technical proposals; rather, we examine the agency's evaluation to assure that it is reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. See Mark Dunning Industries, Inc., B-230058, Apr. 13, 1988, 88-1 CPD ¶ 364. The protester bears the burden of showing that the evaluation is unreasonable, and the fact that it disagrees with the agency does not itself render the evaluation unreasonable. Id. Further, even a proposal which is technically acceptable or susceptible of being made acceptable may generally be excluded from the competitive range if, relative to other proposals received, it does not stand a real chance for award. Hittman Associates, Inc., 60 Comp. Gen. 120 (1980), 80-2 CPD ¶ 437.

Here, the Air Force's evaluation plan established a minimum number of technical score points a proposal needed to obtain in order to be rated acceptable or susceptible of being made acceptable. In order to receive points in the area of production, an offeror, under the evaluation plan, had to meet the agency's minimum man-hour standard or demonstrate its ability to function with fewer employees. Sterling's proposal simply did not meet this standard, since it neither met the established staffing level nor offered any explanation to overcome this shortfall. We note, in this connection, that while the incumbent's manning chart also indicates a lower full-time staffing level than the standard established by the agency, our review shows that it did provide an alternate approach with assurances that the agency's needs would be met.

Further, we disagree with Sterling's contention that the agency's use of the internal manning-level standard during evaluation of proposals was improper. The agency states that its determination of minimum man-hour requirements was based on the Air Force's manning during in-house performance, its historical and projected work load, and its experience with the incumbent contractor's successful performance. Although Sterling asserts that the agency's bases for its manning estimates were invalid, our Office will not overturn an agency's determination of its minimum needs simply because the protester argues that its own

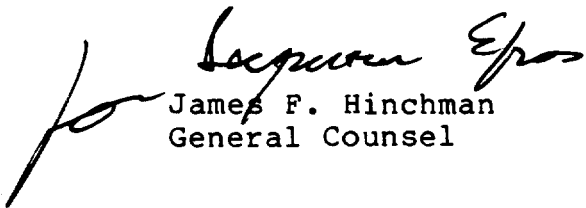
calculations are more accurate. See GTE Government Systems Corp., B-222587, Sept. 9, 1986, 86-2 CPD ¶ 276. Moreover, an agency is not required to disclose in the solicitation a manning level developed by the agency evaluators to assess whether proposed personnel were adequate where, as here, such model is developed based on tasks in the solicitation and merely reflects the evaluators' judgment concerning the minimum number of personnel necessary to perform the work. Intercom Support Services, Inc., B-222547, Aug. 1, 1986, 86-2 CPD ¶ 135. In short, the only requirement is that the RFP place offerors on notice that this is an area that will be evaluated. Here, the Performance Work Statement provided the projected work load estimated for the contract, and the RFP clearly advised offerors that production (manning) was one of three evaluation elements. The agency points out, in this connection, that the inclusion of manning requirements in the RFP would eliminate the exercise of the offeror's judgment in preparing its proposal and in this way hamper the agency's ability to evaluate the contractor's understanding of the government's requirements and ability to perform. We therefore find no merit in Sterling's arguments.

The protester also argues that the evaluation element of production (manning) was given disproportionate weight in the evaluation. Sterling points out that since the solicitation advised that three elements would be used to evaluate technical proposals, i.e., production, quality, and management, without indicating their relative importance, offerors could assume that the three elements were approximately equal in importance. Pointing out that the agency report only criticized Sterling's proposal for its manning level, Sterling argues that a deficiency in this one area should not have weighed heavily enough to render the proposal unacceptable.

Since the element of manning is obviously of such importance in a labor-intensive service contract, we see no reason why a proposal that fails to meet the agency's minimum manpower standard should not be considered unacceptable. This is especially so where, as here, relative to four other technically acceptable offers received (which offered

significantly more manning), the excluded proposal was comparatively deficient and, as submitted, did not stand a real chance for award.

The protest is denied.


James F. Hinchman
General Counsel