



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Federal Services, Inc.
File: B-235661
Date: August 28, 1989

DIGEST

1. Agency determination to exclude proposal from competitive range as technically unacceptable is not arbitrary, unreasonable or in violation of procurement laws or regulations where proposal for janitorial services fails to demonstrate how or when offeror will perform required services and makes a blanket offer to comply with solicitation requirements.
2. Technically unacceptable offer may be excluded from the competitive range irrespective of low offered price.
3. Agency acted promptly in notifying protester 21 days prior to award that its offer was no longer in consideration. In any event, failure to promptly notify firm that it is no longer in consideration for award is procedural in nature and does not affect validity of an otherwise properly awarded contract.

DECISION

Federal Services, Inc., protests the award of a fixed-price contract to Safeguard Corporation under request for proposals (RFP) No. RFP-00-89-R-4, issued by the United States Department of Agriculture for janitorial services. Federal Services contends that its proposal was improperly excluded from the competitive range.

We deny the protest.

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The RFP provided that award would be made to the responsible offeror whose offer, conforming to the solicitation, was the most advantageous to the government, price and other factors considered. Offerors were required to submit detailed technical and cost proposals. Technical proposals were required to provide sufficient detail to demonstrate how each aspect of the statement of work was to be accomplished.

The RFP set out the following technical evaluation criteria, in descending order of importance:

1. Technical Approach:

- a. Comprehensive plan to meet statement of work requirements.
- b. Proposed approach to assure quality control, achieve performance deadlines, and provide corrective measures to be utilized in event of performance failure.
- c. Supervisory/employee training plan.
- d. Plan for supervisory/employee phase-in during contract implementation.
- e. Subcontracting plan.
- f. Day/Night supervision plan

2. Management/Supervision: Qualifications of proposed management/supervisory personnel.

3. Offeror's Experience and Qualifications.

Price was not a weighted evaluation factor, and offerors were informed that price would be evaluated only for those proposals that were determined to be technically acceptable.

Agriculture received 5 proposals, including those of Federal Services and Safeguard. The technical evaluation panel reviewed the proposals and concluded that only Safeguard's offer was technically acceptable and would be included in the competitive range. Federal Services was notified by letter of April 6 that its proposal was no longer being considered for award. On April 27, Agriculture awarded a \$2,765,952 contract to Safeguard. Federal Services protested on May 25.

Initially, Agriculture contends that the protest is untimely because it was filed more than 10 working days after Federal Services learned that its proposal was rejected. The agency's rejection notification, however, did not explain why the protester's proposal was technically unacceptable. It was only after Federal Services requested and received, on May 11, a debriefing did Federal Services first learn the reasons for the technical unacceptability of its proposal. Since the company protested within 10 days of that date, our timeliness requirements are satisfied. 4 C.F.R. § 21.2(a)(2) (1988); The Gibson Hart Co., B-232259, Nov. 29, 1988, 88-2 CPD ¶ 529.

Federal Services protests that its proposal was technically acceptable and should have been included in the competitive range. It contends that its proposal was responsive to the RFP and that any deficiencies were "minor weaknesses and informational deficiencies" which were easily curable through discussions. The protester also argues that Agriculture improperly did not consider its low price in determining the competitive range.

The evaluation of proposals and determination of the competitive range are matters within the discretion of the contracting agency since it is responsible for defining its needs and must bear the burden of any difficulties resulting from a defective evaluation. Federal Servs., Inc., B-231372.2, Sept. 6, 1988, 88-2 CPD ¶ 215. In this regard, it is not the function of our Office to evaluate proposals de novo, although we closely scrutinize an agency decision which results, as here, in a competitive range of one. Institute for International Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273. However, we will not disturb that determination absent a clear showing that it was unreasonable, arbitrary or in violation of procurement laws or regulations. Id.

We have reviewed the proposals, evaluations and submissions of the parties and are not persuaded that the agency's determination to include only Safeguard in the competitive range was unreasonable, arbitrary or in violation of any laws. Rather, we find that Federal Services failed to demonstrate in its proposal how it intended to perform the contract work.

While offerors were required to propose a comprehensive and detailed plan to meet the requirements of the statement of work, Federal Services did not demonstrate how or when it would accomplish the required daily and periodic work. Instead, Federal Services provided an organizational and staffing plan that only identified employee positions and

their functions and stated that its workers "will be assigned specific duties" and "will follow a pre-determined plan." Federal Services, however, did not provide Agriculture with this pre-determined plan or otherwise provide schedules to perform the services. Likewise, regarding the solicitation requirements to perform snow or trash removal, Federal Services stated in its proposal that would provide a snow removal plan in September of each year and that it intends to subcontract the trash removal services. Federal Services' statements that it would perform the contract work do not satisfy its obligation to demonstrate to the agency how it would perform. See Supreme Automation Corp. et al., B-224158, et al., Jan. 23, 1987, 87-1 CPD ¶ 83, where we held that a blanket offer to meet mandatory requirements will not substitute for a detailed description of how a firm plans to do so.

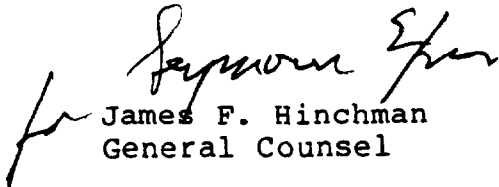
In short, the basic information supplied by Federal Services in its proposal was not sufficient to satisfy the detailed requirements set out in the RFP. While Federal Services argues that any omissions and deficiencies in its proposal were informational deficiencies which would be easily curable through discussions, it is clear that the deficiencies were more substantial than that, such that the agency could not determine the technical acceptability of the proposal. In such circumstances, the agency could reasonably conclude that the offer was unacceptable and exclude it from the competitive range without holding discussions with the offeror. Union Natural Gas Co., B-231461, Sept. 13, 1988, 88-2 CPD ¶ 231.

The protester also contends that the agency improperly failed to consider its low price in determining the competitive range. We have held that an agency may not exclude a technically acceptable offer from the competitive range without considering price. See Howard Finley Corp., 66 Comp. Gen. 545 (1987), 87-2 CPD ¶ 4. Here, however, Federal Services' proposal was found technically unacceptable, and a technically unacceptable offer can be excluded from the competitive range irrespective of its low offered price. Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94.

The protester also complains that Agriculture failed to promptly notify the firm of its exclusion from the competitive range. Federal Services asserts that if it had been promptly notified, it could have taken action to alleviate the agency's concerns or could have filed its protest prior to award. The record shows that Federal Services was notified of the rejection of its offer 21 days prior to the award to Safeguard. We find that Agriculture did promptly

notify the protester that its proposal was no longer in consideration. In any event, the failure to promptly notify a firm that it is no longer in consideration for award is a procedural irregularity which does not affect the validity of an otherwise properly awarded contract. SITEK Research Laboratories, B-228084, Dec. 28, 1987, 87-2 CPD ¶ 630.

The protest is denied.


James F. Hinchman
General Counsel