



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Technical & Analytical Services, Inc.
File: B-240144
Date: October 26, 1990

Sam Z. Gdanski, Esq., for the protester.
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Department of the Interior, for the agency.
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Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Agency properly rejected protester's proposal from the competitive range as technically unacceptable where the proposal did not contain sufficient information to allow the agency to determine whether the solicitation's technical requirements had been met.
2. Proposal that agency properly finds technically unacceptable may be excluded from the competitive range without consideration of price.
3. Contracting agency is not required to conduct discussions with offerors of proposals determined to be technically unacceptable.

DECISION

American Technical & Analytical Services, Inc. protests the agency's exclusion of its proposal from the competitive range under request for proposals (RFP) No. FWS-9-OAS-90-151, issued by the Fish and Wildlife Service, Department of the Interior, for chemical analysis services. American Technical argues that the agency incorrectly evaluated its proposal and improperly excluded it from the competitive range.

We deny the protest.

The RFP is for the chemical analysis of environmental materials for residue of organochlorine pesticides and polychlorinated biphenyls (PCB). The RFP provided for award of a firm, fixed-price requirements contract to the responsible offeror whose offer was most advantageous to the government, price and other factors considered. The RFP provided further that selection of the contractor would be

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based primarily on the results of the technical evaluation. Technical proposals were evaluated on two levels. Under level 1, the accuracy of a firm's chemical analysis of certain test samples provided by the government was evaluated.^{1/} The RFP stated that if a firm received an acceptable rating on level 1, it was evaluated under level 2 on the soundness of its analytical approach, previous experience, and capability to timely process samples.

By the April 16, 1990, closing date, the agency received 15 proposals. After the level 1 evaluation of initial proposals, six proposals, including American Technical's, progressed to evaluation under level 2. Level 1 scores of the offerors advanced to level 2 ranged from 49 to 70 on a 100 point scale; American Technical's score was 49.

Under the level 2 evaluation, proposals received scores ranging from 43 to 86 on a 100 point scale; American Technical's score was 63. After this evaluation, the contracting officer determined that none of the proposals were technically acceptable. It decided, however, that the two proposals with the highest combined scores were susceptible to becoming acceptable if discussions were conducted. The contracting officer concluded that the remaining four proposals, including the protester's, were no longer within the competitive range since, in the agency's view, their combined scores for level 1 and level 2 were too low to be susceptible of becoming technically acceptable. The two offers that remained in the competitive range received composite (level 1 and level 2) scores of 156 and 133; American Technical's composite score of 112 was fourth out of six.

American Technical was notified by mail on June 8 that its proposal was not in the competitive range. By letter of July 2, the contracting officer informed American Technical that its proposal had been excluded from the competitive range as technically unacceptable and gave reasons for the rejection. Discussions have been conducted with the two remaining offerors, although award has been withheld pending our decision.

American Technical disagrees with the agency's evaluation of its proposal and asserts that most of the deficiencies noted by the agency were either based upon an unspecified preference for a particular technical approach, reflected a lack of knowledge of industry standards, or were essentially informational and could easily have been cured through discussions. The protester also contends that the agency

^{1/} The samples to be analyzed included fish, eggs, and soil.

violated procurement regulations by making a competitive range determination without consideration of price.

In reviewing an agency's technical evaluation and decision to eliminate an offeror from the competitive range, we will not reevaluate the proposal, but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the procurement laws and regulations. AEC Int'l Inc., B-237347, Feb. 12, 1990, 90-1 CPD ¶ 180. Based on our review of the record, we find the agency's evaluation of American Technical's proposal as technically unacceptable and its elimination from the competitive range, without regard to price, were reasonable.

The agency characterized American Technical's level 1 score of 49 as "marginally" acceptable. The evaluators found that the protester had reported the wrong result on 55 out of a total of 106 possible organochlorine results which should have been reported in its analysis of the samples, and that the analysis miscalculated or missed various elements in the samples, e.g., lipids and toxaphenes. The record confirms that the agency only advanced American Technical and two other offerors, who received a score of 49, to level 2 "in the spirit of trying to be fair," even though it was "only remotely possible that any of these three would perform well enough in level 2 to make them technically acceptable." Although the protester generally questions the agency's ability to evaluate the results, it does not provide us with any specific basis upon which to question its level 1 score, which was determined by an adjusted percentage of correct results achieved in the sample analysis. Moreover, it was an apparent uphill battle for American Technical to be considered acceptable after level 1, since there was no provision for an opportunity, through retesting, to improve its marginal results on level 1, which constituted 50 percent of the evaluation weight.^{2/} See Modern Tech. Corp.; Scientific Sys. Co., B-236961.4; B-236961.5, Mar. 19, 1990, 90-1 CPD ¶ 301.

American Technical fared somewhat better both relatively and numerically under level 2 but this was insufficient, in the agency's judgment, to make its proposal technically acceptable overall. Under level 2, in the area of analysis, the agency noted that the protester's proposal was generally weak because it provided very little detail as to how procedures were performed and did not contain any discussion as to why a

^{2/} There were only a limited number of government supplied samples, and the offerors were given an equal and ample opportunity to analyze the samples they were provided to assess their qualifications in this regard.

particular procedure was employed. The agency found, for instance, that American Technical did not include in its proposal a suitable method of separating PCBs from other organochlorine compounds. The agency notes that this may have been the primary cause for the protester's poor sample analysis results under level 1 where American Technical reported 8 false positive results and 13 excessively high results of PCBs. The agency also found that the protester proposed, in the procedures for quantitation of results, to average individual chromatographic peaks, but did not indicate how it determined the chemical concentration of individual peaks. Another critical deficiency in American Technical's proposal was its failure to indicate, in accordance with Good Laboratory Practice regulations, that its quality assurance officer had independent authority. Based on American Technical's marginal analysis of the samples, its seriously deficient, undetailed level 2 analytical approach, and considering that two potentially acceptable proposals were submitted, the firm was found technically unacceptable and not susceptible to being made acceptable.

American Technical contends the agency's technical evaluation was unreasonable. Our review confirms that its proposal, which did not set out, as requested, the precise steps of its analytical approach, was properly found technically unacceptable, particularly given its marginal score in analyzing the test samples. We agree that under such circumstances, the agency could have no confidence that American Technical's proposal was susceptible to becoming acceptable.

With respect to whether American Technical's proposal included a suitable procedure for separation of PCBs from other organochlorine compounds, the protester states that it included in its proposal a standard operating procedure (SOP) entitled "Florisil Clean-up." It argues that since chromatography is a process of separating compounds, when a laboratory which does chromatography discusses "clean-up" it is axiomatic that this involves separations.

The agency asserts that mere mention of the use of the chemical florisil as a clean-up does not indicate that American Technical will use the procedure to separate extracts into PCB and non-PCB compounds. The agency notes that American Technical never states the purpose or steps of its clean-up procedure. The agency also notes that according to the protester's SOP, the two extracts that result from this clean-up procedure will be recombined into one extract for analysis by gas chromatography, which may not allow for the desired result. Our review of the protester's proposal revealed no language indicating that this procedure was for separation of PCBs.

American Technical asserts that if its proposal was read in accordance with standard industry practices, the agency would have understood its reference to Florisil clean-up and not considered it a deficiency. However, offerors are responsible for preparing their proposals in a manner that establishes that what is offered will meet the government's needs, and agencies are not obligated to search out omitted information or to credit offerors for information that they may have, but failed to submit with their proposal. Campbell Eng'g, Inc., B-231126, Aug. 11, 1988, 88-2 CPD ¶ 136. We think the agency was reasonable in not crediting the protester for understanding or demonstrating more than it explicitly stated in its sparse proposal. In a solicitation as technically complex as this, a firm may not simply indicate that it will use a certain procedure, such as florisil clean-up, without indicating how and for what purpose it is being used. Here, the agency's concerns about American Technical's proposal in this regard are apparently confirmed by the level 1 results, which seemingly indicated the PCBs were not adequately separated from the other compounds, and by American Technical's continued failure to precisely specify how it will separate the PCBs.

With respect to quantitation procedures for PCBs, the agency noted that although the protester indicated it would average the chromatographic peaks, it did not indicate how it would determine the concentration of the peaks. American Technical asserts that concentration must be known before quantitation is attempted and consequently this was not addressed in its proposal. The protester states further that in its standard operation procedure (SOP), it provided that individual PCB isomers are identified by using a minimum of eight characteristic peaks and by overlaying chromatograms.

The agency responds that "identification" is not the same as quantitation and that American Technical should have addressed in its proposal quantitation issues, such as how it would deal with variable responses of the electron capture detector to peaks which represent isomers or mixtures of isomers. Here too, American Technical did not address quantitation issues other than to state simply how it identified PCB isomers. Thus, the evaluators had no basis to conclude that the firm demonstrated a clear understanding of the concept.

With respect to the quality assurance officer, the protester notes that its officer is separate and independent from the laboratory operations as required by the Good Laboratory Practices regulations. The protester's proposal provides that the officer "together with" the Technical Director have authority to require that procedures be altered. The agency interpreted the word "together" as meaning that both

individuals must be in agreement as to the change required before it can be carried out. We do not think this interpretation is unreasonable. The language in the protester's proposal does not, in our view, indicate that the officer has authority independent of the Technical Director.

American Technical questions how it could be found technically unacceptable overall when it was scored acceptable, even if marginally, under level 1 and then scored higher under level 2. According to the agency, despite the protester's marginal performance in analyzing the samples, it included American Technical in the level 2 evaluation in an attempt to keep competition as broad as possible. It states that had American Technical scored exceptionally high under level 2, this might have compensated for its low level 1 score and made the proposal technically acceptable overall.

We find nothing in this determination that is prejudicially inconsistent with the evaluation scheme as stated in the RFP. Notwithstanding American Technical's argument that its advance from level 1 to level 2 necessarily meant it was technically acceptable, the record belies this assertion and indicates that American Technical was never considered acceptable, and would only have been considered susceptible to being made acceptable if it had submitted a strong level 2 proposal. Moreover, since level 1 and level 2 were both evaluations of the initial proposals, American Technical was not prejudiced by being evaluated under level 2, despite its remote chance for award after level 1.

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, American Technical's proposal was found technically unacceptable. A technically unacceptable offer can be excluded from the competitive range irrespective of its lower offered price. Federal Servs., Inc., B-235661, Aug. 28, 1989, 89-2 CPD ¶ 182. Moreover, an agency need not conduct discussions with a technically unacceptable offeror. Sun Enters., Inc., B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ 384.

The protest is denied.



James F. Hinchman
General Counsel