



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** HSI-CCEC  
**File:** B-240610  
**Date:** December 7, 1990

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John Cheung for the protester.  
Lt. Col. William J. Holland, Department of the Air Force, for the agency.  
Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Exclusion of proposal from competitive range without considering proposed price was improper where proposal, although rated marginal, was not determined to be unacceptable.

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### DECISION

HSI-CCEC, a joint venture, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. F64605-90-R-0002, issued by the Department of the Air Force for its simplified acquisition of base engineering requirements (SABER) at Hickam Air Force Base (AFB), Hawaii. HSI alleges that proposals were not evaluated in accordance with the established criteria, that the agency failed to inform HSI of perceived deficiencies during discussions, and that the agency failed to consider HSI's low price in determining the competitive range. No award has been made.

We sustain the protest.

The solicitation contemplated award of an indefinite delivery, indefinite quantity contract to the responsible offeror whose proposal was determined to be the most advantageous to the government, price and other factors considered. The RFP specified that technical factors would be more important than price and set forth four technical evaluation factors, in descending order of importance: project management ability, subcontracting support capability, company experience, and subcontracting plan for small and small disadvantaged business.

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Under the Air Force's evaluation scheme, proposals received a color-coded rating for each evaluation factor: blue (exceptional), green (acceptable), yellow (marginal), or red (unacceptable). The technical evaluation team found all nine initial proposals technically acceptable, with overall color ratings of yellow or higher, and sent clarification requests and deficiency notices to each offeror; HSI was informed that its proposal was "reasonably susceptible of being made acceptable by providing additional information, clarification and/or verification" of certain areas of its proposal. Based upon HSI's responses to two clarification requests and one deficiency notice, the technical evaluation team awarded HSI a rating of yellow (marginal) for each of the four technical factors, for an overall marginal rating. The contracting officer determined that all offerors with marginal or lower ratings now would be excluded from the competitive range, and thus eliminated HSI's proposal from the range. Upon learning of its rejection, HSI filed an agency-level protest, which was denied; HSI then filed this protest in our Office.

HSI argues that the rejection of its proposal was unreasonable in view of the minor clarifications requested by the Air Force. HSI contends that it provided complete responses to the agency's three concerns, but was rejected nonetheless based on different concerns to which it could have responded had they been raised in discussions. HSI maintains that rejection of its proposal based on these grounds was unreasonable. HSI also asserts that the agency improperly failed to consider its low price before eliminating its proposal from the competitive range.

The Air Force responds that the results of the technical evaluation are supported by HSI's proposal, and therefore are reasonable, and concludes that HSI's exclusion from the competitive range was proper. The Air Force explains that it did not raise certain of its concerns with HSI during discussions because it believed more detailed discussions of HSI's proposal deficiencies would have constituted improper technical leveling. The agency also explains that offerors' prices were not considered in the competitive range determination because technical considerations were more important than cost.

We find that the Air Force improperly failed to consider HSI's price when it excluded its proposal from the competitive range. Under Federal Acquisition Regulation (FAR) § 15.609(a), the competitive range must be determined on the basis of cost or price and other factors that were stated in the solicitation and must include all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being

made acceptable through discussions. See Bay Tankers, Inc., 69 Comp. Gen. 403 (1990), 90-1 CPD ¶ 389. Thus, it is improper to exclude an offeror from the competitive range solely on the basis of technical considerations, without considering cost, unless the proposal is technically unacceptable; exclusion from the competitive range solely on technical considerations is not justified merely because a proposal is technically inferior, though not unacceptable. HCA Gov't Servs., Inc., B-224434, Nov. 25, 1986, 86-2 CPD ¶ 611.

HSI's proposal was ranked marginal, not technically unacceptable, by the technical evaluation team. At the same time, HSI's offered price, while not low overall, was lower than that of two offerors that remained in the competitive range. Thus, while the RFP provided that prices would not be evaluated per se, the agency nevertheless was required to consider price in view of the FAR requirement that price and technical proposals be evaluated in determining the competitive range. Excluding HSI from the competitive range without doing so was improper. HCA Gov't Servs., Inc., B-224434, supra.

In addition to sustaining the protest on this ground, we also find that the agency's conclusion that HSI's proposal did not have a reasonable chance of being selected for award was based in part on perceived deficiencies which are not supported by the record. It is not the function of our Office to evaluate proposals, as the determination of the relative merits of proposals is primarily a matter of agency discretion. However, we will examine an agency's evaluation to determine whether it was reasonable and consistent with the stated evaluation criteria. Quality Sys., Inc., B-235344; B-235344.2, Aug. 31, 1989, 89-2 CPD ¶ 197.

In the most important technical area, project management ability, the technical evaluation team found that HSI did not plan to provide a dedicated on-site staff until delivery orders, under the contract, exceeded the \$500,000 minimum. The Air Force addressed the on-site staff issue in a clarification question: "Identify the office location for the staff. Will the office be located on Hickam AFB? If not, where will it be located?" HSI responded that it would establish a field office on Hickam AFB in addition to its home office in Honolulu. Although this answer was unconditional, the contracting officer explains that HSI's statement was read in conjunction with its answer to an unrelated question about its cost proposal. In the cost proposal clarifications, the Air Force asked HSI if it had considered the impact of receiving delivery orders for only the \$500,000 minimum contract amount. HSI's response indicated that, at the \$500,000 level, the joint venture partners would perform the

project management duties. Based upon this clarification, the Air Force concluded that HSI did not intend to establish an on-site staff until delivery orders, under the contract, exceeded the \$500,000 minimum, and that this lack of on-site support and reliance on home office support presented a high risk.

The record does not support the contracting officer's conclusion. HSI clearly stated that it would provide an on-site staff, and nowhere in its proposal or clarification responses does it state that it will not establish an on-site office until the \$500,000 contract minimum is attained. We see no inconsistency between HSI's plan to utilize existing joint venture resources to manage the project at the \$500,000 level and its offer to provide a field office at Hickam AFB. Moreover, it is not immediately clear why any reliance by HSI on home office support would present a high risk, as the firm's Honolulu home office is only a 10-minute drive from Hickam AFB.

In the second most important technical area, subcontracting support capability, the agency noted that HSI's initial proposal had included a listing of subcontractors in "only a few" disciplines. The contracting officer issued HSI a deficiency notice stating that "information on all subcontractors, to include experience and resumes, was not provided." HSI responded by providing resumes for 17 subcontractors in various disciplines, most of which listed experience at military installations. The agency found that HSI's proposed subcontractors were still "deficient in several disciplines that will be needed to perform the work on this contract," and rated HSI's proposal marginal under this factor as a result.

Again, we find that the record does not support the agency's conclusion. HSI's initial proposal listed 19 contractors in the fields of masonry, electrical work, painting, flooring, aluminum windows and glazing. The Air Force's deficiency notice only requested "experience and resumes" for all subcontractors; HSI provided this information. The Air Force did not inform HSI that its complement of subcontractors was deficient in any required area and, moreover, the evaluation documents do not indicate in what areas HSI's subcontractors were considered deficient. We note that HSI proposed to perform much of the required work using employees of the three joint venture firms, which claim experience in concrete, masonry, painting, welding, pipefitting, plumbing, sheet metal, ventilation and air conditioning, general construction, electrical and mechanical work. The only required trades that do not appear to be represented among the joint venture firms' own employees and HSI's proposed subcontractors are carpentry and roofing (although, again, this is not clear since the

evaluation does not indicate the perceived deficient sub-contract areas). The record does not show why the agency determined that this seemingly minor discrepancy could not have been clarified, or why it presented a significant risk and warranted a marginal rating for the area.

Finally, HSI's subcontracting plan for small and small disadvantaged business also received only a marginal rating. As noted previously, HSI planned to perform much of the work under the contract using employees of the three joint venture firms; therefore, it did not plan to subcontract much of the work. Indeed, the evaluation noted that HSI's proposal was advantageous in this regard. HSI stated that it would offer as much of the work as possible to the two small business firms in the joint venture. The Air Force, concerned that HSI did not plan to subcontract work to other small businesses, requested clarification as to what percentage of the work would be offered to those two firms. When HSI confirmed that its goal was to support its own small business firms as much as possible, the Air Force concluded that HSI's plan "does not support the spirit of the plan to subcontract to small and small disadvantaged business," and rated HSI's proposal marginal in this area.

The subcontracting plan requirements are designed to encourage the placing of as much business as possible with small and small disadvantaged business concerns. See FAR § 52.219-8. HSI could accomplish this purpose by subcontracting certain work to its two small business components. There is no prohibition against such an arrangement in the FAR or in the solicitation here. On the other hand, HSI could not avoid the obligation to provide a specific plan for subcontracting work to its small business components. FAR § 19.702. It is not clear the extent to which HSI's marginal rating in this area results from the plans to subcontract to small joint venture participants--an acceptable practice--and how much results from the absence of details with regard to that plan. Thus, the Air Force's evaluation may be unreasonable in this area.<sup>1/</sup>

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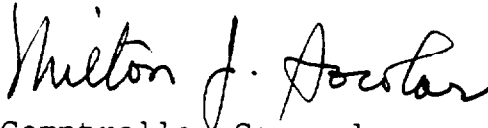
<sup>1/</sup> HSI raises other alleged evaluation deficiencies which we find are without merit. For example, HSI argues that the Air Force should have informed it of a perceived weakness in its proposal to assign quality control responsibility to its project manager instead of to a separate quality control manager. However, the Air Force only determined that HSI's approach was not as good as another approach--a determination we think was reasonable--and thus was not required to bring this to HSI's attention through discussions; agencies are not required to hold discussions in areas of proposals that are technically acceptable, and merely have not received the

(continued...)

We conclude that the Air Force's exclusion of HSI from the competitive range at this stage of the procurement, without considering its price, which was competitive with the prices offered by other firms included in the competitive range, was improper. See HCA Gov't Servs., Inc., B-224434, supra.

Accordingly, we sustain the protest. By letter of today to the Secretary of the Air Force, we are recommending that the agency reevaluate HSI's proposal, taking into consideration HSI's offered price as well as our concerns regarding the technical evaluation, and then redetermine the competitive range. If HSI is determined to be in the competitive range, then it, as well as the offerors in the competitive range, should be given an opportunity to respond with revised proposals. In that case, since HSI was provided a copy of its evaluation narrative during the protest process, we recommend that the Air Force provide each offeror a similar copy of its evaluation prior to discussions in order to equalize competition. We also find that the protester is entitled to recover its costs of filing and pursuing the protest; HSI should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(d) (1990).

The protest is sustained.

*for*   
Comptroller General  
of the United States

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1/(...continued)  
maximum possible score. See URS Int'l, Inc., et al.,  
B-232500; B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ 21.