

S. Riback



Comptroller General
of the United States

Washington, D.C. 20548

145004

Decision

Matter of: Akal Security, Inc.

File: B-243940.2

Date: September 30, 1991

Donald E. Barnhill, Esq., East & Barnhill for the protester,
Karl Dix, Jr., Esq., Smith, Currie & Hancock for Stay, Inc.,
an interested party.

Gary L. Brooks, Esq., National Archives and Records
Administration, for the agency.

Scott H. Riback, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency failed to conduct meaningful discussions with the
protester where it did not fairly apprise the firm that its
compensation package for guards was deficient and that this
was the most significant consideration in the award decision.

DECISION

Akal Security, Inc. protests the award of a contract to Stay,
Inc. under request for proposals (RFP) No. NAMA-91-N1-P-0017,
issued by the National Archives and Records Administration
(NARA) for the acquisition of security guard services. Akal
argues that NARA failed to make the award in accordance with
the evaluation and award criteria outlined in the
solicitation and failed to conduct meaningful discussions.

We sustain the protest.

The RFP, a 100-percent small business set-aside, called for
the submission of firm, fixed-price offers to furnish security
guard services at NARA's headquarters building for a base
period of 1 year and two 1-year options. A Service Contract
Act (SCA) wage determination, applicable to security guards,
was included in the RFP.

The RFP specified that award would be made to the firm submitting the offer which was in the best interests of the government, considering cost and the technical factors specified. The RFP listed evaluation criteria, and specified the relative weight, as follows:

- A. Personnel/Individual Qualifications (40 points)
 - 1. Project Manager (15 points)
 - 2. Supervisory Personnel (15 points)
 - 3. Selection of Security Officers (10 points)
- B. Corporate Experience (40 points)
 - 1. Interpretation of NARA's Requirements (15 points)
 - 2. Method of Monitoring Contract (15 points)
 - 3. Incident Response Plans (10 points)
- C. Past Related Experience (20 points)

The RFP provided narrative statements in section L describing the information to be provided in the proposals. Under the RFP, total price had less weight than technical factors, but the agency was required to determine whether a difference in technical merit warranted a price premium; if proposals were technically equal, price was to be determinative.

In response to the solicitation, eight offers were received, six of which were determined to be within the initial competitive range. The agency then submitted written discussion questions to each of the six offerors and provided, at the offerors' discretion, an opportunity to engage in oral discussions. Five of the six initial competitive range offerors participated in oral discussions. After discussions, the agency solicited and received revised technical proposals from the initial competitive range offerors. The agency then determined that three of the six firms remained in the competitive range. One of the three firms was found to be a large business and was therefore eliminated. The two remaining firms--Akai and Stay--submitted best and final offers (BAFO).

After receipt of BAFOs, the source evaluation board (SEB) raised the technical rating of Stay in two subfactors ("Supervisory Personnel" and "Selection of Security Officers") under the first evaluation criterion ("Personnel/Individual Qualifications") based upon the nature and quality of the firm's compensation package. This change was attributable to the SEB's view that Stay's compensation plan, which reflected the highest wages, would better enable the firm to recruit and retain qualified security officers. Akai's BAFO price was significantly lower than Stay's because of its proposed lower guard compensation. The Source Selection Authority for the agency decided that award should be made to Stay, citing the differential resulting from the awardee's higher compensation

level as the most significant determinant of technical superiority.

Akal argues that the solicitation did not suggest that the offerors' relative ability to recruit and retain personnel as measured by the firms' compensation plans would be evaluated. Akal also contends that meaningful discussions were not conducted with it on this subject, even though its compensation plan was regarded as seriously deficient.1/

The agency's award decision was primarily based upon its assessment that the compensation package offered by Stay would better enable the firm to recruit and retain qualified personnel. The source selection memorandum states that the "Personnel/Individual Qualifications" evaluation factor "is clearly the most important technical evaluation factor."2/ The source selection memorandum then discusses the importance of recruitment and retention of quality personnel as measured by the adequacy of the offerors' compensation plans, and compares the relative guard salary levels of Stay, Akal and the incumbent contractor.3/

The agency clearly viewed Akal's compensation plan as a deficiency. The source selection memorandum states, in discussing the adequacy of Akal's compensation package, that "failure to reasonably match the [local market] level of compensation presents a severe risk in acquiring and retaining the desired level of professionalism. The Government is specifically concerned that [Akal's] compensation plan would result in difficulty in attracting the desired caliber of personnel, and in limiting turnover." Elsewhere, the source selection memorandum states, in connection with a comparison between Akal's and the incumbent's compensation plans, that "[the Source Selection Authority] believes that [Akal's] compensation plan would

1/ Although Stay argues that Akal's protest of the failure to conduct meaningful discussions is untimely, Akal's initial protest, filed within 10 working days of being apprised of the award, expressly mentioned that no discussions were conducted with it on the subject of compensation plans.

2/ The RFP provides that technical criterion No. 1, "Personnel/Individual Qualifications," and technical criterion No. 2, "Corporate Experience," are equal in weight.

3/ Stay's guard compensation levels were higher than the incumbent's and Akal's compensation levels. Akal's compensation levels exceeded the minimum SCA wage rates, and in some cases were lower or higher than the incumbent's wage rates.

result in massive turnover in the armed productive officer and supervisory ranks within [6] months. We also believe that [Akal's] ability to recruit and retain high quality personnel would be adversely impacted." Finally, in discussing Akal's smaller pay differential between productive officers and supervisory personnel, the source selection memorandum states "we believe that this will also have a direct influence on the quality and retention of supervisory personnel."

Two other differences in technical merit were not discussed in the source selection memorandum other than noting that they were less significant in the selection than the differential that resulted from the offerors' respective compensation levels. With regard to Akal's significantly lower price, the source selection memorandum states that Stay's higher cost is attributable to its higher guard wages and that Stay's specific technical advantage, i.e., its higher guard compensation rate, was worth the resultant higher price.

We find that the agency failed to conduct meaningful discussions on the subject of Akal's compensation package. In order to discharge its duty to conduct meaningful discussions, an agency must advise all competitive range offerors of the areas of their proposals which are deemed to be deficient, so that they may have an opportunity to revise their proposals to fully satisfy agency requirements. Federal Acquisition Regulation § 15.610(c)(2); SeaSpace, B-241564, Feb. 15, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 179.

The record establishes that Akal's proposed compensation package was regarded as a significant deficiency and that this matter was the most important factor in the award decision. The record also shows no mention of the firm's compensation package or its ability to recruit and retain personnel in the written discussion questions submitted to Akal, and the parties agree that these subjects were not mentioned during the oral discussions.

NARA did allege in its report that it stressed guard compensation as a general matter during the oral discussions. We conducted a hearing on the subject of what occurred during oral discussions with Akal regarding its compensation plan. The contracting officer testified that he viewed Akal's compensation package as deficient. Hearing Transcript (Tr.) 23, 26. He further testified that he only mentioned compensation in a "standard introductory speech," where he stated that "the minimum wages offered under the . . . wage determination would not be sufficient, in [NARA's] opinion, to retain and attract the highest caliber armed security officers." Tr. 22-23. In response to the question of whether he intended to identify proposal deficiencies to Akal during the opening speech, the contracting officer replied that it

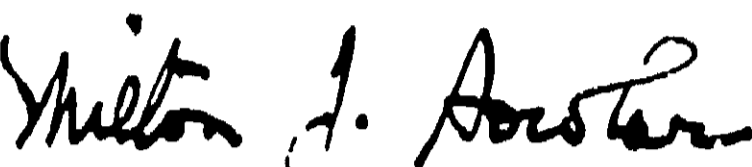
was not the agency's intent to identify deficiencies through the speech, but rather to "reemphasize" the special nature of the agency's requirements as outlined in the solicitation. Tr. 26-27. The contracting officer also reported that he did not advise Akal that its compensation rate was deficient. Tr. 23-24. Akal's representative testified that no mention of guard compensation was made at any time during the oral or written discussions. Tr. 4-5. Neither party retained notes on the oral discussions. Tr. 6, 18, 23.

Based on our review of the record, including the hearing testimony, we find that NARA did not fairly convey to Akal that its compensation package was regarded as deficient. As discussed above, Akal argues that the compensation plans were not encompassed in the evaluation criteria. All parties concede, and our review confirms, that the aspect of the offerors' proposals that determined the award was not explicitly mentioned in the RFP. The degree of specificity necessary in the disclosure of deficiencies to meet the requirement for meaningful discussions is not a constant, but varies with the context of individual procurements. For example, an agency is not required to remind an offeror to submit certain information with its final offer when that information is specifically called for in the solicitation. Huff & Huff Servs. Corp., B-235419, July 17, 1989, 89-2 CPD ¶ 55. On the other hand, if the solicitation is not specific in its identification of the government's requirements or fails to make reference to one of the evaluation factors to be employed in the evaluation of proposals, the agency's discussions should be more specific in their identification of deficiencies. Logistics Sys. Inc., B-196254, June 24, 1980, 80-1 CPD ¶ 442.

Since NARA regarded Akal's compensation package as a deficiency, it should have specifically pointed out this matter during the discussions. There is no written documentation that compensation plans or guard recruitment and retention were mentioned during oral discussions. Although the contracting officer testified that he regarded Akal's proposed compensation as a deficiency, this item was not on the list of the deficiencies and weaknesses provided to Akal during the written or oral discussions. Even if we accept the contracting officer's testimony that he generally referred to the relationship between wage rates and the quality of security officers in his standard introduction to oral discussions, we do not find that this fairly apprised the protester that its compensation package represented a deficiency given the lack of specificity contained in the RFP. Since the offerors' compensation plans became the most important factor in the award selection, this failure prejudiced Akal.

The protest is sustained.

We recommend that NARA reopen discussions with Akal and Stay and provide them with an opportunity to submit revised proposals. If the agency concludes, on the basis on its evaluation of revised offers, that Stay is no longer properly in line for award, it should terminate the contract awarded to Stay and make award to Akal. Akal is also entitled to the costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1).

for 
Comptroller General
of the United States