



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Northwestern Travel Agency, Inc.
File: B-244592
Date: October 23, 1991

Barry Roberts, Esq., for the protester.
Henry E. Pfeiffer, Esq., Cline, Williams, Wright, Johnson & Oldfather, for Travel & Transport, an interested party.
Stuart Young, Esq., Michelle Harrell, Esq., and Margaret A. Dillenburg, Esq., Office of the General Counsel, General Services Administration, for the agency.
Sylvia Schatz, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

1. Contracting agency did not act improperly in inspecting only one of protester's three proposed locations at which travel services would be furnished where solicitation provided that agency "may conduct on-site investigation of any or all facilities" to verify proposed staffing and equipment, the agency had recently inspected the other two locations, and protester failed to request inspection of the other two locations.
2. Contracting agency properly considered rebates offered the government in making competitive range determination where solicitation for travel services included rebates among the stated evaluation factors; the competitive range must be determined on the basis of cost or price and other factors stated in the solicitation.
3. Protest that agency was biased against protester in its evaluation of proposals is denied where protester does not show, and the record does not indicate, that evaluation of its proposal was unreasonable but instead merely speculates that the agency's knowledge of protester's offer of a lower rebate to the government prejudiced the objective evaluation of technical proposals.

DECISION

Northwestern Travel Agency, Inc. (NTA) protests the General Services Administration's (GSA) award of a contract to Travel & Transport (T&T), under request for proposals (RFP) No. 7FXI-X5-90-S031-N, for the establishment and

operation of a travel management center for the state of South Dakota. NTA principally protests GSA's failure to conduct an on-site investigation of all of its proposed travel facilities.

We deny the protest.

The RFP solicited proposals for a full service travel facility in Sioux Falls, South Dakota; although there was no requirement to provide services at any other site, the RFP also permitted offerors to furnish ticketing services through the use of subcontractors with full service facilities at other locations within the state. The statement of work (SOW) required the successful offeror to make reservations for transportation, hotel accommodations, and car rental, and to issue and deliver tickets for official government travel. The solicitation contemplated a 1-year, no-cost, requirements contract, with four 1-year options, under which the compensation to the contractor was limited to commissions and fees paid by the commercial travel industry. Further, the RFP solicited an optional rebate or fee to be paid the government, to be calculated as a percentage of the contractor's domestic air traffic sales or other commissions and fees.

Award was to be made to the responsible offeror whose offer conformed to the RFP and was most advantageous to the government, when evaluated on the basis of the following five factors listed in the RFP: (1) project management, including organization, location and facilities, quality control plan, and implementation; (2) offeror's qualifications, including commercial accounts, actual business mix, estimated business mix, and prior service; (3) equipment capability; (4) personnel qualifications; and (5) rebate. The solicitation stated that the factors for project management and offeror's qualifications were of equal weight and were "followed by" the remaining three factors of lesser weight. Offerors were also advised that if offered at no cost to the government, enhancements which increased the quality of service and saved money for the government would receive additional consideration.

Six proposals were received by the closing date for receipt of initial proposals; five of the proposals, including NTA's, were rated as technically acceptable. The rebates proposed by those offerors were then disclosed to the evaluators, and the scores for the rebates were added to the offerors' technical scores. Based upon the subsequent recommendation of the technical review panel (TRP), the contracting officer determined that four of the five offerors, including NTA, were within the competitive range. Site visits were then conducted to confirm information provided in the proposals. Although NTA proposed a Sioux

Falls location and subcontractors in Rapid City and Aberdeen, South Dakota, GSA reported that it only investigated the Rapid City location, since it had previously performed on-site investigations of the other two locations during a previous procurement by GSA and, according to the agency, was told by an NTA representative that additional inspections at the other two locations were not necessary because no change in operations had occurred since the prior inspections. After written discussions, offerors were requested to submit a best and final offer (BAFO).

Based upon the evaluation of BAFOs, GSA determined that T&T had submitted the proposal most advantageous to the government and therefore selected that firm for award. T&T received the highest total point score of 164 points, 14 points more than NTA's initial BAFO score of 150 points, and 10 points more than NTA's score (154 points) after the agency's subsequent reevaluation (as discussed below). Although NTA's proposal was found to contain no weaknesses and was considered technically acceptable, there were areas in the proposal which did not receive all available points and in which the proposal was evaluated as less advantageous than T&T's proposal. With respect to the evaluation factor for equipment capability, the solicitation required offerors to describe any enhanced services being offered in addition to the required basic reservation and ticketing services, and to identify for which airlines the services were available. In this regard, the solicitation noted that any enhancement to the offeror's score would vary according to the number of airlines for which the enhanced services were available. In addition, the solicitation generally cautioned that to receive full credit under the equipment capability factor, the proposal must specifically explain the capability of the offices which would directly serve the government. The agency, however, found that NTA had failed to specify either the enhanced services that would be available at each of its proposed facilities or the specific airlines for which NTA could provide these services. In contrast, T&T both described the services it was offering at its proposed location in South Dakota and listed many of the airlines for which enhanced services were available.

The solicitation indicated that the evaluation would focus on the offeror's corporate, commercial-type sales experience, which was similar to the agency's requirement, and further provided under the organization subfactor of the project management factor that the government would take into consideration the fact that many professional, corporate travel firms have discrete commercial and vacation departments. While T&T proposed a location offering discrete commercial and vacation departments, GSA's inspection of NTA's facilities and its review of its

proposal indicated that NTA did not. In addition, NTA was evaluated under the subfactor for quality control plan under the project management factor and under the equipment capability factor based, in part, on the fact that it proposed a "commercial/corporate" version of airline reservation systems, instead of the "professional" version proposed by T&T. The agency initially concluded that the corporate version, unlike the professional version, would be unable to perform fare checks--that is, verify that the government was receiving the lowest rate to which it was entitled--in all of the reservation systems at all of NTA's locations. After award to T&T, however, the agency reevaluated NTA's BAFO and determined that the proposed corporate versions of the reservation systems in fact would be able to perform fare checks in multiple systems. Although the agency made an upward change in NTA's score in these two areas, resulting in a total point score of 154 points, NTA still did not receive full credit under the equipment capability factor since the corporate version, unlike the professional version proposed by T&T, lacked the capability of issuing tickets.

Upon learning of the award to T&T, NTA filed this protest with our Office. Subsequent to filing the protest, NTA filed a complaint in the United States District Court for the District of South Dakota, Southern Division, Civ. No. 91-4087, seeking a preliminary injunction to stay the performance of T&T's contract pending a decision by our Office on its protest. On July 16, 1991, the stay was denied, but the court requested our decision on the merits of NTA's protest.

NTA first argues that the RFP required an on-site inspection of all offerors' facilities and that therefore GSA's failure to inspect its proposed Aberdeen and Sioux Falls facilities for the current procurement was improper. NTA maintains that as a result of its failure to conduct the required inspection of all facilities, the agency relied on out-dated information from the previous inspections of these two locations under the prior solicitation to evaluate its

¹ We believe the protest is, in large part, untimely because it concerns alleged improprieties in the solicitation apparent prior to the time set for receipt of initial proposals, but was not filed prior to that time, 4 C.F.R. § 21.2(a)(1) (1991), and because with respect to other grounds of protest, it was filed more than 10 working days after the basis of protest was known. 4 C.F.R. § 21.2(a)(2). Nevertheless, we have considered the merits of the issues before the court as requested. 4 C.F.R. § 21.9; see The B.F. Goodrich Co., B-230674, May 18, 1988, 88-1 CPD ¶ 471.

current proposal; it claims that GSA should have known that information from these site visits was out-dated, since NTA's initial proposal generally stated that the firm had done a major upgrade of its computer hardware in August of 1990.

NTA's claim that the RFP required the agency to conduct an on-site investigation of all locations proposed by each offeror is without merit. Rather, the RFP specifically stated that the "government may conduct on-site inspection of any or all facilities before award in order to verify staffing, equipment, facilities, and the offeror's ability to generate required reports and invoices." (Emphasis added.) See Magneco Inc., B-235338, Sept. 1, 1989, 89-2 CPD ¶ 207. Therefore, contrary to NTA's interpretation, under the solicitation the agency had the option to inspect any or all of its proposed facilities. GSA reports that NTA was advised that the agency would inspect only the Rapid City location, and not the Sioux Falls and Aberdeen locations, because of the earlier inspections of the latter, and that the firm confirmed there had been no changes to the latter since the earlier visits. Although NTA disputes this account, the agency's intention not to inspect the Sioux Falls and Aberdeen locations necessarily were evident when the agency only inspected the Rapid City location, and we consider it significant that NTA raised no objection to the agency's approach. In view of the fact that the other locations had recently been inspected, and given NTA's failure to object to the agency's inspection approach, we believe the agency reasonably concluded that further inspections were not necessary.

NTA also questions the agency's evaluation of its technical proposal. NTA first contends that it should have received the same number of enhancement points under the equipment capability factor as T&T, because the airline reservation system proposed by NTA at its Sioux Falls facility had the exact same related reservation services, such as advance seat selection, last seat availability, and boarding passes, as the airline reservation system proposed by T&T. According to the protester, these services are not enhancements, but instead are basic features included in every airline reservation system, including NTA's.

The evaluation of technical proposals is primarily a function of the procuring agency, since it is the agency that is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Dimensions Travel Co., B-224214, Jan. 13, 1987, 87-1 CPD ¶ 52. As a result, our Office will not make an independent determination of the relative merits of proposals, but instead will examine the agency's evaluation to ensure that

it was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Travel Centre, B-236061.2, Jan. 4, 1990, 90-1 CPD ¶ 11. The fact that the protester disagrees with the agency's conclusions does not itself establish that the agency acted unreasonably. Anderson-Elerding Travel Serv., Inc., B-238527.3, Dec. 19, 1990, 90-2 CPD ¶ 500.

We find that the agency's evaluation of NTA's proposal under the equipment capability factor was reasonable. The solicitation specifically required offerors to describe related reservation services, such as seat selection, advance seat assignment, and advance boarding passes, in order to receive enhancement points. NTA's BAFO, however, failed to state whether it offered these specific services at each of its proposed facilities; in contrast, T&T's proposal specifically stated that its facility offered these three services. Furthermore, the RFP required offerors to identify for which specific airlines they could offer the related reservation services. While NTA's proposal generally stated that its Sioux Falls facility could provide services for all domestic and international carriers, T&T listed numerous airlines and concerns for which the enhanced services were available. Procuring agencies are required to evaluate proposals based on the content of the proposal itself; an offeror in a negotiated procurement must demonstrate within the four corners of its proposal that it is capable of performing the work upon the terms most advantageous to the government. William B. Hackett & Assocs., Inc., B-232799, Jan. 18, 1989, 89-1 CPD ¶ 46. In view of the clear solicitation requirement to specifically describe the availability of offered enhancements, we believe the agency properly awarded more evaluation points to T&T's proposal, which specifically addressed the availability of the services and identifies numerous specific airlines for which it was offering the services, than to NTA's proposal, which only generally described the availability of service.

NTA further contends that the evaluation failed to take into account the fact that its proposed corporate version of airline reservations systems has the same capabilities as the professional version proposed by T&T, except for the ticketing function. In our view, however, the inability of NTA's corporate version to issue tickets when T&T's professional version has this capability further supports the agency's determination to award NTA's proposal fewer enhancement points than given T&T's proposal under the equipment capability factor.

NTA claims that its proposal should have received more points under the organization subfactor of the project management factor because it had organized its facilities

into physically discrete commercial and vacation departments. The RFP advised offerors that a proposed facility with separate corporate and vacation departments would be considered an enhancement. However, although NTA claims that its commercial and vacation departments are discrete, GSA found the discussion in NTA's proposal of its organization to be confusing. Since the agency's on-site investigations indicated that NTA facilities were not organized into discrete commercial and vacation departments, and NTA's proposal did not clearly establish that its offices were divided into separate commercial and vacation departments, we believe that the agency reasonably determined not to increase NTA's score to reflect a discrete organization. Id.

NTA contends that the agency acted improperly in opening the rebate offers after receipt of initial proposals; according to NTA, the solicitation required that rebate offers be opened only after submission and evaluation of BAFOs. NTA speculates that because the agency knew offerors' rebates prior to completing the final technical evaluation, including the fact that NTA offered a lower rebate and received a lower rebate score (4 points) than did T&T (5 points), the agency may have been improperly influenced by this knowledge in the evaluation and, as a result, may have departed from the stated evaluation factors.

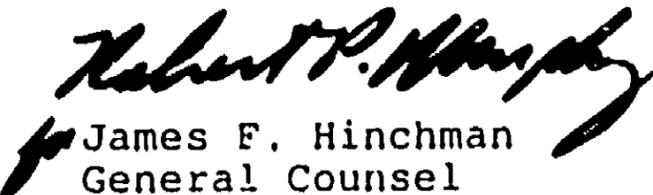
NTA's assertion that the agency was required to open the rebate offers only after evaluation and submission of BAFOs is without merit. The RFP contemplated that additional points for rebates, if offered, were to be added to an offeror's technical score; in addition, the solicitation provided that award could be made on the basis of initial offers without discussion and submission of BAFOs. It is clear, therefore, that the RFP contemplated that rebates would be considered in the evaluation of initial proposals so that the necessity for discussions and submission of BAFOs could be determined. This is consistent with the general requirement that the competitive range be determined on the basis of cost or price and other factors that were stated in the solicitation. Federal Acquisition Regulation (FAR) § 15.609(a); see generally National Sys. Mgmt. Corp., B-242440, Apr. 25, 1991, 91-1 CPD ¶ 408.

To the extent that NTA believes that GSA's knowledge of the offerors' rebate offers may have prejudiced the objective evaluation of technical proposals, NTA bears a heavy burden of proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Western States Mgmt. Servs., Inc., B-231545.3, Mar. 17, 1989, 89-1 CPD ¶ 307. The protester must produce credible evidence showing bias, and must also demonstrate that the bias translated into agency action

which unfairly affected the protester's competitive position. Facilities Eng'g & Maintenance Corp., B-233974, Mar. 14, 1989, 89-1 CPD ¶ 270. Here, NTA has failed to provide any evidence demonstrating GSA prejudice against NTA in the evaluation of proposals. Although NTA believes that the evaluation of its proposal in the areas of offeror's qualifications and location and facilities may have been affected by the agency's knowledge of the rebate proposals, the record shows that NTA's proposal was in fact rated significantly higher than T&T's proposal in these areas. Given the lack of any credible evidence of bias in the evaluation of NTA's proposal, we have no basis upon which to question the motives of contracting officials.

In its comments on the agency report, NTA raises additional untimely grounds of protest.² These grounds of protest were not before the court when it requested our opinion. Since they are untimely and the court has not requested our opinion with respect to them, we will not consider the merits of these additional bases for protest.

The protest is denied.


James F. Hinchman
General Counsel

² For example, NTA alleges that the award to T&T was improper because GSA did not require submission of, and T&T did not furnish, a subcontracting plan, the submission of which NTA believes was required by statute, 15 U.S.C. § 637(c)(4)(A) (1988), and regulation, FAR § 19.702(a). GSA, on the other hand, reports that it did not include in the solicitation the standard FAR clause, FAR § 52.219-9, requiring submission of a subcontracting plan when a services contract is expected to exceed \$500,000, because the contractor's compensation for services will come from rebates from airlines and other travel concerns, rather than from the government, and the requirement therefore is not applicable here. Since the absence of a clause requiring submission of a subcontracting plan was apparent on the face of the solicitation, NTA was required to raise this basis of protest prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1).