

Benejam



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Anthony Hernandez, CPA, P.C.
File: B-246104
Date: February 4, 1992

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Anthony Hernandez for the protester.
Julian W. De La Rosa, Department of Labor, for the agency.
Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Contracting agency reasonably excluded protester's proposal from the competitive range where the record shows that the technical evaluation panel properly downgraded protester's proposal in areas found deficient in accordance with stated evaluated criteria, resulting in a significantly lower rating relative to the scores of the 24 highest-rated offerors included in the competitive range. Notwithstanding possibility that some deficiencies might have been cured through discussions, protester's proposal lacked reasonable chance of being selected for award.

DECISION

Anthony Hernandez, CPA, P.C. protests the exclusion of its proposal from the competitive range after the evaluation of initial offers under request for proposals (RFP) No. L/IG 91-1, issued by the Department of Labor (DOL) to provide professional accounting and auditing services. The protester contends that DOL deviated from the evaluation criteria announced in the RFP and that the agency's decision to exclude the firm from the competitive range was arbitrary and capricious.

We deny the protest.

BACKGROUND

The RFP, issued as a total small business set-aside, contemplated multiple awards of fixed-price, indefinite quantity, labor hour contracts for a base period of 1 year, with up to two 1-year options. The RFP sought offers to provide the required professional services on a task order basis, in support of the agency's Office of Inspector

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General (OIG). The RFP's statement of work advised that the successful contractors would be responsible for, among other things, performing audits, surveys, reviews, research, technical assistance, training, and orientation in support of the OIG's statutory responsibilities.

Offerors were required to submit separate technical and cost proposals. Section M of the RFP indicated that technical merit would be more important than cost, and explained that each technical proposal would be rated and scored in accordance with the following five evaluation factors worth a total of 100 technical award points: (1) general qualifications--10 points; (2) client experience--30 points; (3) personnel qualifications and experience--50 points; (4) project management--5 points; and (5) understanding scope of work--5 points. The RFP informed offerors that the government would evaluate cost proposals for award purposes by adding the total proposed cost for all options to the total proposed cost for the basic requirement, and developing "cost award points" for each offeror in accordance with a formula described in the RFP. Total award points would then be developed for each offeror by adding the total technical award points and cost award points. The RFP stated that while the total technical award score would be a critical factor in the selection process, award would be made on the basis of proposals representing the best offers to the government, all factors considered.

Thirty-seven firms, including the protester, responded to the RFP by the May 15, 1991, extended closing date for receipt of proposals. A technical evaluation panel evaluated all proposals according to the stated evaluation criteria using the point ranges specified in the RFP. Total award points developed for 36 of the initial proposals ranged from 41.33 to 87.55; one proposal received a total award score of 16.86 points. The protester's proposal, which received a total award point score of 45.27--the fourth-lowest point score earned by any proposal--was not included in the competitive range. Rather, the contracting officer included the 24 highest-scoring proposals within the competitive range.

PROTESTER'S CONTENTION

The protester alleges that in evaluating its proposal, the agency deviated from the evaluation criteria announced in the RFP, and argues that the agency's decision to exclude its proposal from the competitive range was therefore arbitrary and capricious. The protester further alleges that the point ratings assigned to each of the five technical evaluation factors by the evaluation panel are totally without merit and unsubstantiated by the record.

COMPETITIVE RANGE DECISION

In a negotiated procurement, the purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a); Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range is to be "determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award." FAR § 15.609(a). Even where proposal deficiencies are minor and readily correctable through the clarifications or discussions, the agency may properly exclude a proposal from the competitive range where, relative to other acceptable offers, the proposal has no reasonable chance of being selected for award. See Wordpro, Inc., B-242100.2, Apr. 24, 1991, 91-1 CPD ¶ 404; Hummer Assocs., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. In reviewing protests concerning competitive range determinations, we will examine the agency's evaluation as a whole to ensure that it has a reasonable basis. American Contract Health, Inc., B-236544.2, Jan. 17, 1990, 90-1 CPD ¶ 59. Based on our review of the record, including the RFP, the evaluation documents, the protester's proposal, and the submission of the parties, we find that the competitive range determination and the evaluation of the protester's proposal were reasonable.

The record shows that the evaluation panel gave the protester's technical proposal a score of only 30.25 out of 100 possible points, and specifically found the protester's proposal to be "minimally technically acceptable," requiring considerable revisions to meet the RFP's requirements. By comparison, each of the 24 proposals in the competitive range received technical scores above 42.90, with the highest-rated proposal receiving a technical score of 73.25. As for the evaluation of cost proposals--which the protester does not dispute--the protester's evaluated proposed cost was higher than the evaluated proposed cost of 18 of the 24 offerors included in the competitive range. Based on a comparison of the scores awarded the protester's proposal to the scores awarded the higher-rated proposals in the competitive range, in a procurement where technical merit was more important than cost, we find, for the reasons that follow, that the contracting officer reasonably excluded the protester's proposal from the competitive range.

General Qualifications and Personnel Experience

Our review of the record indicates that the majority of the weaknesses the evaluation panel found in the protester's proposal concerned the protester's failure to fully satisfy

the general qualifications (worth 10 points) and the personnel qualifications and experience (worth 50 points). With respect to these two factors, the evaluation panel awarded the protester 1 and 9.09 points, respectively.

In order to facilitate evaluation of offers, section L of the RFP set forth detailed instructions on the specific contents of technical proposals. Contrary to the protester's assertions, the RFP specifically identified the type of information offerors were required to provide in order to satisfy the general qualifications and the personnel qualifications and experience requirements. For example, offerors were instructed to indicate in their proposals the availability of professional time for proposed partners/principals, managers, supervisors, seniors and staff, and to describe in detail specific relevant experience and training for each proposed key individual.

While the RFP specified that a maximum level of effort of 4,000 hours was required for each 1 of 5 key labor categories (partner, manager, supervisor, senior, and staff), the protester proposed only 2,000 hours for each of two labor categories (manager and supervisor). In addition, each of the resumes for other proposed key personnel indicated that each individual would be available for significantly less time than required by the RFP. For example, the two proposed partners' resumes indicated that each individual would be available for approximately 33 percent of the time; and the proposed managers and staff would be available only 50 percent of the time. Based upon its analyses, and assuming 2,080 labor hours per person/per year, the evaluation panel concluded that the proposal, as a whole, failed to satisfy the maximum number of labor hours specified in the RFP for each category. Given the expected time-intensive nature of the required services as specified in the RFP, the evaluation panel, in our view, reasonably downgraded the protester's proposal in the general qualification area.

As for the personnel qualifications and experience factor, section L of the RFP required offerors to provide resumes detailing the qualifications of proposed key personnel. The RFP specifically set forth in detail the type of information each resume must contain, including the number of hours of continuing education and training received within the previous 2 years, and whether such training was related to government audits. The RFP also required offerors to describe each individual's prior experience with various types of specified audit services (e.g., government financial statements, expanded scope audits, program results audits, and financial and compliance audit services). With respect to preparing the resumes, the RFP stated that

"[s]pecifics must be provided in order for the experience, particularly DOL experience, to be properly evaluated."
(Emphasis in original.)

Despite the RFP's specific instructions and warning, several of the resumes the protester submitted failed to indicate the number of hours of continuing education obtained, and lacked specific experience details. While the resumes of the proposed partners/principals listed several "continuing professional seminars" attended, nowhere do the resumes indicate the number of credit hours earned during the previous 2 years, or whether any of the seminars were related to government auditing, as specifically required in the RFP. The resumes of other key individuals simply stated, "various in-house seminars," without specifying the type of seminar attended, nor the number of credit hours earned, or whether the seminars were attended within the previous 2 years. Also, contrary to the specific instructions of the RFP, the resumes did not include a description of each key individual's prior experience in any of the various types of audits listed in the RFP.

By choosing to ignore the RFP's specific instructions concerning the importance of providing detailed continuing education credits and relevant experience information for each of the key individuals proposed, the protester assumed the risk that, as occurred here, the evaluation panel would not find sufficient details to adequately evaluate each key individual's experience and training as relevant to the required services. The protester further assumed the risk of receiving a low rating by specifying that several of the proposed individuals would be available for significantly less time than required by the RFP. Accordingly, we find that the evaluation panel reasonably downgraded the protester's proposal in the personnel qualifications and experience factor.

Project Management and Understanding Scope of Work


With respect to project management, the evaluation panel found that, contrary to the specific RFP's instructions, the protester's proposal failed to provide an adequate discussion of the role of the key labor categories within the management structure; failed to fully describe the management structure and supervision to be exercised over the work to be performed under the proposed contract, including review of field audit review of reports and workpapers; and failed to discuss an estimate of the percent of time that each key individual would spend at the audit sites managing and supervising work under the contract.

As for understanding the scope of work, the evaluation panel specifically found that the proposal failed to address a significant number of audit assignments in which the protester might be involved; failed to fully recognize the significant differences between performance audits over financial audits; and failed to discuss the use of statistical sampling and audit-specific specialists in potential audit assignments. Based on our review of the record, we find that the evaluation panel reasonably downgraded the proposal with respect to project management and understanding scope of work.

CONCLUSION

Given the solicitation's emphasis on technical merit, and given the disparity between the protester's technical score relative to the scores of the 24 highest-rated offerors in the competitive range, and the protester's higher proposed cost, we find that the protester's proposal lacked a reasonable chance of being selected for award, notwithstanding the possibility that some of the deficiencies might have been cured through discussions. Wordpro, Inc., supra. Accordingly, the contracting officer reasonably excluded the proposal from the competitive range. See Hummer Assocs., supra.

The protest is denied.


for James F. Hinchman
General Counsel