



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

Decision

Matter of: Professional Safety Consultants Co. Inc.
File: B-247331
Date: April 29, 1992

Ernest B. Jorgensen, Jr., for the protester,
Kathy M. Sachen-Gute, Esq., Department of the Treasury, for
the agency.
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Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. An award based on initial proposals, without holding discussions, is proper where the solicitation advises offerors of that possibility, no discussions are held, and the competition demonstrates that the acceptance of initial proposals will result in the lowest overall cost to the government.
2. Protest that agency held discussions with the awardee but improperly failed to do so with the protester is denied where the agency's communication with the awardee did not give the firm the opportunity to revise its proposal or to furnish information necessary to evaluate the proposal.
3. Protester's allegation that the awardee acted improperly with regard to the key personnel it proposed, based on the fact that the awardee replaced the individuals initially proposed as key personnel after award, is denied where there is no indication in the record that it was unreasonable for the awardee, when it submitted its initial proposal, to expect the proposed employees to be available for performance.
4. The General Accounting Office will not review an affirmative determination of responsibility by the contracting officer absent a showing of fraud or bad faith on the part of procuring officials or that definitive responsibility criteria in the solicitation were not met.
5. Protest that agency improperly evaluated protester's and awardee's proposals is denied where record shows that the agency's evaluation of the proposals was reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

Professional Safety Consultants Co., Inc. protests the award of a contract to Wackenhut Corporation under request for proposals (RFP) No. BEP-91-65(TN), issued by the Bureau of Engraving and Printing (BEP), Department of the Treasury, for safety and health services for BEP employees during the second and third shifts. Professional contends that the award to Wackenhut based on initial proposals was improper and that the agency's evaluation was arbitrary.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation, issued on August 16, 1991, sought safety and health coverage services for BEP's second and third shift employees including, but not limited to, surveillance, accident and/or illness investigation, and property damage investigation. The RFP notified offerors that the award could be made on the basis of initial offers, without discussions, and cautioned offerors that the initial proposals should contain the offerors' most favorable terms. The solicitation provided that award would be made to the offeror whose proposal was most advantageous to the government.

The solicitation listed the following evaluation factors in descending order of importance: (1) qualification of personnel, (2) proposed management approach, (3) proposed technical approach, and (4) related company experience. The solicitation advised offerors that price would be of lesser relative importance than technical factors; however, price would be the determining factor if proposals were determined to be technically equal.

Three firms submitted proposals by the September 17 closing date. After the evaluation, the agency ranked the proposals in the following descending order of technical merit: (1) Larsen Environmental Associates; (2) Wackenhut; and (3) Professional. Since Wackenhut's price was substantially lower than the other offerors' prices and its proposal was ranked second in technical merit, the contracting officer decided to award the contract on the basis of initial proposals to Wackenhut as the most advantageous offeror. The agency notified the unsuccessful offerors by letter that award was made to Wackenhut. Professional's protest to our Office followed.

AWARD BASED ON INITIAL PROPOSALS

Professional contends that the agency's decision to make award based on initial proposals was improper because the agency failed to state in the solicitation that best and final offers (BAFO) would not be requested or that discussions would not be held prior to award.

A contracting agency may make an award on the basis of initial proposals, and not conduct discussions or allow offerors to revise their proposals, where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government. Federal Acquisition Regulation (FAR) § 15.610(a)(3); Maico Hearing Instruments, Inc., B-229925, Jan. 15, 1988, 88-1 CPD ¶ 42.¹

BEP included the appropriate clause in the RFP advising offerors to submit their best proposals since award might be made on the basis of initial proposals, and Professional has not alleged or demonstrated that the agency's selection of Wackenhut did not result in the lowest overall cost to the government. Although the protester questions the agency's price reasonableness determination, the record here shows that the contracting officer determined that based on the government estimate and a comparison of the three prices, Wackenhut's price was fair and reasonable. Since this determination is not contradicted by any evidence in the record, we have no basis to find the award based on initial proposals was improper. See Daylight Plastics, Inc., B-225057, Mar. 10, 1987, 87-1 CPD ¶ 269.

Professional also argues that the agency improperly conducted discussions only with the awardee. Professional bases this argument on the fact that the contracting officer contacted Wackenhut and Wackenhut verified that its proposed price was correct. Conducting discussions with one offeror generally requires that discussions be held with all offerors in the competitive range. Motorola, Inc., 66 Comp. Gen. 519 (1987), 87-1 CPD ¶ 604. Discussions occur when an offeror is given the opportunity to revise or modify its proposal. Pauli & Griffin, B-234191, May 17, 1989, 89-1 CPD ¶ 473. Discussions are distinguishable from requests for verification, which involve advising an offeror of a

¹For Department of Defense, United States Coast Guard, and National Aeronautics and Space Administration procurements, the requirement that an award on the basis of initial proposals result in the lowest overall cost to the government has been eliminated. See FAR § 15.610(a)(4) (FAC 90-7).

suspected mistake and requesting affirmation or an explanation of its proposed price. See FAR § 15.607(a); Greenleaf Distrib. Servs., Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ 422.

There were three offerors here; Wackenhut's offer was the lowest received. Because it was low in comparison to the other offers, the contracting officer simply requested that Wackenhut verify its price, and the company did so. FAR § 15.607(a) specifically identifies these types of communications as clarification contacts that do not require the holding of discussions with all competitive range offerors. Accordingly, we find no merit to this aspect of the protest.

SUBSTITUTION OF PROPOSED PERSONNEL

The protester alleges that the awardee's post-award substitution of two individuals who were proposed as key personnel in its proposal shows that there was a lack of good faith on the part of the awardee from the beginning of the procurement process to the time when contract performance was initiated.

Offeror "bait-and-switch" practices, whereby an offeror proposes the use of personnel that it does not expect to actually use during contract performance, have an adverse effect on the integrity of the competitive procurement system and generally provide a basis for proposal rejection. Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53. This does not mean that an offeror must use the personnel it proposed or risk losing the contract for which it is competing in every case. For example, where the offeror provides firm letters of commitment and the names are submitted in good faith with the consent of the respective individuals (that is, the offeror is not proposing personnel it has no intention of providing), the fact that the offeror, after award, provides substitute personnel does not make the award improper. See Informatics Gen. Corp., B-224182, Feb. 2, 1987, 87-1 CPD ¶ 105.

Conversely, however, an offeror has a responsibility to propose persons who it reasonably may expect will be available for contract performance. In two recent cases, we have interpreted this obligation to require an offeror to confirm the continued availability of the personnel it proposes in certain circumstances. See Mantech Field Eng'g Corp., B-245886.4, Mar. 27, 1992, 92-1 CPD ¶ ____ (protest sustained where awardee failed to confirm availability of one proposed key employee whose intention to accept employment with awardee was questionable, and six other proposed employees whose resumes were received over 6 months

before they were included in awardee's proposal); CBIS Federal Inc., B-24844.2, Mar. 27, 1992, 92-1 CPD ¶ ____ (protest sustained where awardee lacked letter of commitment as required by RFP for one proposed key employee and unreasonably assumed she was still available despite strong indication to the contrary, and failed to confirm continued availability of second proposed key employee whose letter of intent was signed 8 months previously).

In this case, Wackenhut provided individual resumes for both of the key personnel that it proposed; one individual subsequently left the company, and the other individual became ill. There is nothing in the record to suggest that it was unreasonable for Wackenhut, when it submitted its initial proposal, to expect that the personnel would be available for contract performance. Unlike the circumstances in Mantech and CBIS, nothing in this case put the employees' commitments in question; rather, their unavailability was due to subsequent events which Wackenhut could not foresee when it included them in its proposal. As a result, the record here does not indicate that Wackenhut acted unreasonably with regard to the personnel it proposed. Further, although Wackenhut did not have the opportunity to withdraw the proposed key personnel and to propose substitutes in a BAFO because award was made on the basis of initial proposals, Wackenhut, after contract award, informed the contracting specialist that the two individuals would not be available. Wackenhut thus promptly notified the government of the changed circumstances when the employees became unavailable.

RESPONSIBILITY

The protester argues that the award to Wackenhut was improper because Wackenhut does not meet the qualification requirement in the RFP that offerors be responsible organizations engaged in the performance of contracts comparable to the work called for under the RFP. To support this assertion, the protester argues that although Wackenhut is a well-known and reputable security and guard services firm, these services cannot be classified as work comparable to that called for in the solicitation.

Section L of the RFP required offerors to furnish a narrative statement listing comparable contracts which they have performed and the general history and experience of their operating organizations so that the agency could determine the offerors' qualifications. The experience information requested by the RFP concerned the potential awardee's ability to perform as required, not its obligation to do so. As such, the information concerned the offeror's

responsibility. See DAVSAM Int'l, Inc., B-218201.3, Apr. 27, 1985, 85-1 CPD ¶ 462. Wackenhut was found responsible here.

We will not review an affirmative determination of responsibility by a contracting officer absent a showing that such determination was made fraudulently or in bad faith or that definitive criteria in the solicitation were not met. 4 C.F.R. § 21.3(m)(5) (1992). Here, there is no evidence of bad faith or fraud on the part of procuring officials, and the requirement that offerors have experience based on comparable contracts did not constitute a definitive responsibility criterion since the requirement was a general standard rather than a specific, objective standard. Alliance Props. Inc., B-214769, July 3, 1984, 84-2 CPD ¶ 14. Accordingly, we dismiss this basis of protest.

TECHNICAL EVALUATION

Professional argues that the agency improperly evaluated both its and Wackenhut's proposals in every technical evaluation area. Professional contends that the agency's evaluation of its proposal shows a pattern of discrimination against Professional, and the agency's evaluation of Wackenhut's proposal shows that the agency steered the award to Wackenhut.

Where a protester alleges bias on the part of procurement officials, the protester must prove that the officials had a specific and malicious intent to harm the protester. Advanced Sys. Tech., Inc.; Eng'g and Prof. Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. In the absence of such proof, contracting officials are presumed to act in good faith. Institute of Modern Procs., Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of accommodating them. Information Sys. & Networks Corp., 69 Comp. Gen. 239 (1990), 90-1 CPD ¶ 203. In reviewing an agency's technical evaluation, we will examine the record to ensure that the evaluation was reasonable. Id. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthService Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. Here, after reviewing the record we conclude that the evaluation was not made in bad faith but, instead, was reasonable and in accordance with the RFP's stated evaluation criteria.

The protester first argues that the agency improperly downgraded its proposal and did not sufficiently downgrade the awardee's proposal in the qualification of personnel area. Specifically, the protester contends that it should have received a higher score in this area than the awardee because both of the key personnel that the protester proposed have Bachelor of Science degrees and more than 30 years of experience, while the key personnel proposed by the awardee have Associate in Applied Science (A.A.S.) degrees and very limited experience. The RFP states that the agency would consider the educational background of the assigned personnel and their experience in development of manuals of comparable scope and type.

The record does not support Professional's argument that the agency should have awarded the firm more points than the awardee received in this area based on the fact that the personnel proposed by Professional possess more advanced degrees. The contract called for safety and health services; the individuals the protester proposed to be key personnel did not have educational backgrounds relating to safety. On the other hand, both of the individuals the awardee proposed did have A.A.S. degrees in occupational safety and health. Thus, while Professional's key personnel had higher degrees, the degrees were not as directly related to the contract services as the degrees of the awardee's personnel. Accordingly, we think the agency could reasonably score the proposals as it did in this area. Moreover, with regard to experience, the evaluator found that Professional's personnel had more experience than the awardee's personnel; consequently, Professional received the maximum points available while the awardee did not.

The protester also challenges the evaluation of the awardee's proposal in the proposed management approach area. The protester argues that Wackenhut should not have received a high score in this area because its management continuity is questionable and it plans to monitor its personnel via telephone and mail.

The RFP provided a description of the contract management area and stated that the proposal would be evaluated under the following considerations: (1) the organizational structure of the company and how the organization would manage and supervise the contract; (2) the person(s) responsible for managing and supervising the contract and the location of the managing offices; (3) the adequacy of the staffing plan; (4) management support of the contract; and (5) responsiveness to BEP requirements without undue staff functional overlaps. While the awardee did not receive the maximum points available in this area, the agency did note that the awardee's contract management plan was workable. The protester also received a high score in

this area--one point less than the protester--even though the agency found its contract management approach to be too general as well as unclear in describing how the firm planned to implement its communication procedures. The scoring thus was applied consistently to both offerors and the agency's decision to give the awardee's proposal one more point than the protester's proposal in this area was reasonable given the comparative evaluation of the proposals. The protester's mere disagreement with the evaluation does not establish that the evaluation was unreasonable. See VGS, Inc., B-233116, Jan. 25, 1989, 89-1 CPD ¶ 83.

The protester also contends that the agency's evaluation in the technical approach area was improper. In this regard, the protester claims that the awardee received more points than the protester in this area despite the fact that the protester submitted 5 pages regarding technical performance and the awardee's discussion of its proposed technical approach was limited to a brief comment. The RFP required the offerors to discuss their overall plan for accomplishing the technical effort during the contract and their approach for a quality assurance plan. The record shows that the proposals submitted by the protester and the awardee had weaknesses with regard to their overall plan of accomplishment; the protester's proposal minimally met BEP's requirements and goals in this area while the awardee's technical approach was not specific as to the tasks required to be accomplished in the statement of work. Despite the length of the protester's proposed technical approach, the agency found that the protester failed to explain how it planned to manage its personnel and train them on current safety issues that apply to the workplace. On the other hand, the agency determined that the awardee's quality assurance plan was an integral part of the services that the awardee planned to offer. Given these relative weaknesses and strengths the agency found in each of the proposals, we have no basis to find the evaluation unreasonable here.


Finally, the protester challenges the evaluation of the related company experience area as improper based on its belief that the awardee did not list any jobs similar to the work called for under the contract.² However, the record shows that the awardee submitted a proposal that

²Unlike the requirement in section L of the RFP calling for general information concerning the offerors' qualifications, section M of the RFP required detailed information from the offerors concerning their overall technical experience, management experience, and the experience of their "organizational elements," including subcontractors and or consultants, in working together on similar projects.

demonstrated that, the firm had gained relevant experience in managing safety and health programs in nuclear facilities and on similar projects which were nuclear-related. The fact that this experience was gained in nuclear facilities rather than in an environment similar to BEP's does not negate the fact that the awardee has performed similar safety functions in the past.

The protester's argument that the agency improperly allocated 60 percent and 40 percent in its overall evaluation to technical quality and price respectively is unpersuasive. The RFP specifically stated that the agency would consider price secondary to technical quality in making its selection decision. Accordingly, the agency reasonably made price secondary by allocating fewer points to price than to technical quality. In any event, we fail to see how the protester was prejudiced by the agency's allocation of points here since the awardee received more points than the protester in both the technical quality area and the price area.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel