



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Contract Services Company, Inc.

File: B-246585.3

Date: May 7, 1992

Jon N. Kulish, Esq., Holmes, Schwartz & Gordon, for the protester.

Edward R. Neilan for ISS Energy Services, Inc., an interested party.

Rebecca L. Kehoe, Esq., General Services Administration, for the agency.

John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly rejected protester's proposal because its staffing, both in terms of numbers and skills, was less than the minimum required to perform the contract work, where staffing is a "go/no-go" evaluation criterion under the solicitation and the proposed level of staffing was significantly below the government estimate and other offerors' staffing levels.

2. Protest that agency failed to point out deficiency of protester's inadequate proposed staffing during discussions is denied where the agency, three times during discussions, advised the protester that its staffing was deficient.

DECISION

Contract Services Company, Inc. (CSC) protests the award of a contract to ISS Energy Services, Inc. under request for proposals (RF) No. GS-02P-91-CTC-0023, issued by the General Services Administration (GSA) for mechanical and elevator maintenance services at the Peter W. Rodino Federal Building, Newark, New Jersey; the Federal Building, Paterson, New Jersey; as well as elevator maintenance services at the Martin Luther King Building, Newark, New Jersey. CSC protests that the GSA failed to evaluate its proposal in accordance with the stated evaluation criteria or to conduct meaningful discussions.

We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract for a base period of 1 year with two 2-year options. The basic solicitation requirement was for management, supervision, labor, materials, supplies, and related services to perform the required mechanical and maintenance services at the three buildings. The RFP contained a detailed description of the work to be performed, and provided detailed instructions for submitting proposals.

Offerors were informed that technical quality was equal in importance to cost or price. The RFP further provided:

"Proposals will be evaluated based on the following technical evaluation factors and subfactors which are listed in descending order of importance.

1. Experience on Similar Projects
.....
2. Qualifications of Key Personnel
.....
3. Maintenance Plan
 - a. Preventive Maintenance
.....
 - b. Subcontracts
.....
 - c. Maintenance and Architectural Repair, Miscellaneous Services, Asbestos Containment
.....
4. Staffing and Organization
 - a. Staffing
.....
 - b. Schedules and Shifts
.....
5. Management Controls
.....
6. Phase-in Plan
....."

The RFP identified experience on similar projects and qualifications of key personnel evaluation criteria as "go/no-go factor(s)," and specified under each that "[o]fferors with less than the required experience will not

be considered for award." The REP further provided with regard to the preventive maintenance, staffing, and schedules and shifts subcriteria, and the management controls and phase-in plan criteria, that "(1) if an offeror's plan does not meet the minimums established, the offeror will not be considered for award. If the plan demonstrated better than the minimums established, the proposal will be rated accordingly."

GSA received five offers, including those of CSC and ISS, and determined that all offers met the minimum technical requirements of the REP and were within the competitive range. Discussions were conducted and best and final offers (BAFO) requested and received.

The offerors' BAFOs were evaluated as follows:

<u>Offeror</u>	<u>Score</u>	<u>Price¹</u>
Offeror A	7.98	\$5,393,242.61
ISS	7.10	5,291,334.85
Offeror B	6.27	5,068,905.90
Offeror C	6.05	9,750,717.65
CSC	5.30	4,112,625.45

GSA determined that ISS's offer was most advantageous to the government, price and technical factors considered and made award to that firm on October 29, 1991. CSC's proposal was determined unacceptable because its staffing was less than the minimum required to perform the REP work.² This protest followed.

CSC contends that the agency's determination that CSC's staffing plan did not meet the minimum requirements established in the solicitation was unreasonable, and that the agency improperly employed an "undisclosed" evaluation criterion--a minimum of 9 productive employees for the Rodino Building--in evaluating the offerors' proposals.

The determination of the relative merits of proposals is primarily a matter of agency discretion which we will not disturb unless it is shown to be unreasonable or inconsistent with the stated evaluation criteria. Reflectone Training Sys., Inc., B-240951, Dec. 10, 1990, 90-2 OPD ¶ 472. A protester's mere disagreement with the agency's judgment does not render that judgment unreasonable Id.

¹Offerors' total evaluated price includes options.

²GSA had initially found CSC's staffing to be minimally acceptable.

The technical evaluators found CSC's proposed staffing plan at the Rodino building inadequate because CSC offered only 6.5 productive employees as opposed to the agency's estimate, based on actual experience, that a minimum of 9 productive employees was necessary to adequately staff that building. The agency also found CSC's staffing plan unacceptable because it called for its operating engineers to perform their duties, as well as the duties of the required journeymen, that is, electricians, plumbers, carpenters and locksmiths. The agency concluded that CSC's low staffing level, considered in conjunction with CSC's planned use of operating engineers to perform their duties as well as those of the journeymen in other trades, failed to meet the solicitation's minimum requirements under the staffing subcriterion.

As stated above, the RFP required that staffing plans must meet the minimums established to be considered for award. That is, this subcriterion (as well as other criteria and subcriteria) contained minimum go/no-go requirements that could serve as the basis to reject a proposal, as well as the basis for point scoring the proposals presuming the minimums are satisfied. Specifically, the staffing subcriterion stated in pertinent part:

"[(D)]emonstrate, as a minimum, that all operating engineer tours and watches are covered by in-house personnel and that there are sufficient qualified in-house personnel of the other trades (i.e., electricians, plumbers, carpenters, and locksmiths) to provide services to the building normally required throughout the business day."
(Emphasis supplied.)

As stated above, this subcriterion also provided that an offeror's proposal would be rejected if it does not meet the minimums established.

Based upon our review of the record, we find that the agency's evaluation of CSC's staffing plan was reasonable and in accordance with the evaluation criteria specified in the RFP. CSC's proposed staffing level of 6.5 productive employees was considerably lower than the agency's estimate of 9 productive employees, as well as the staffing levels proposed by the other offerors, which ranged from 8 to 18 productive employees. Further, the agency's concerns regarding CSC's relatively low staffing levels were compounded by CSC's plan to use its operating engineers to perform their duties and the duties of the other journeymen required by the solicitation. For example, as noted by GSA, under CSC's plan, if the services of an electrician or plumber were required in the building, these services would have to be performed by an operating engineer, leaving the

operating engineer's normal tours and watches uncovered. The evaluators concluded that CSC did not provide enough man-hours to perform regular maintenance and also to respond to service calls. While CSC has asserted that recent building upgrades allow for less staffing than previously required to maintain the building, CSC has not persuasively shown any innovative technical approach or superior quality staff that would permit it to successfully accomplish the work with significantly less staffing than previously required or offered by the other offerors. In short, despite CSC's obvious disagreement, we do not find unreasonable the agency's conclusion that CSC's staffing plan failed to meet the minimums established by the solicitation in that CSC failed to offer sufficient qualified personnel to provide services to the building.

It is true that CSC's initial proposal was rated minimally acceptable for staffing, even though CSC only proposed 5 productive employee positions for the Rodino building. However, the contemporaneous evaluator notes reflect the evaluators' belief that CSC's initial staffing was inadequate to meet the RFP minimums. Although CSC raised its staffing 1.5 productive positions to 6.5 positions in its BAFO, GSA had by this time more clearly focused on the significance of CSC's deficient and unacceptable staffing levels, and realized that it had previously overrated CSC's proposal in this regard, given its finding that CSC's staffing levels were unacceptable both in terms of numbers and skills. Since, as discussed above, GSA had a reasonable basis to find CSC's BAFO staffing unacceptable, the fact that CSC was initially said to be acceptable in staffing does not undermine the reasonableness of GSA's final evaluation. See Adams Corporate Solutions, B-241097, Jan. 9, 1991, 91-1 CPD ¶ 24. Thus, CSC was not prejudiced by GSA's failure to initially determine that CSC's staffing was unacceptable, since CSC was at no time advised that its proposed staffing was acceptable, but, as discussed below, the firm was repeatedly advised that its staffing was deficient. Id.

Under the RFP evaluation scheme, since CSC failed to satisfy one of the RFP's "go/no-go" criterion, its proposal was properly considered technically unacceptable.³

³It is true, as noted by CSC, that GSA did not, but should have, qualitatively evaluated the offeror's proposals under the two most important evaluation criteria, experience on similar projects and qualifications of key personnel. See Lithos Restoration Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ ____ (where evaluation factors are listed in descending order of importance and the solicitation provides that some factors are to be evaluated on a go/no-go basis, the only

See Beacon Constr. Co., Inc., B-222649, Aug. 18, 1986, 86-2 CPD ¶ 195. Inasmuch as CSC's proposal was properly found unacceptable, the fact that it proposed a lower price than the awardee is not pertinent.⁴ See Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94.

The protester asserts that the agency acted improperly in not providing in the RFP its estimate that a minimum of nine productive personnel are required to adequately staff the Rodino building. However, GSA is not required to disclose in a solicitation a manning estimate used to evaluate the adequacy of proposed personnel, particularly where, as here, this is only one factor in evaluating offerors' staffing. Reflectone Training Sys., Inc., supra. The only requirement is that the RFP place offerors on notice that this is an area that will be evaluated, as the solicitation here clearly did. Id.

CSC contends that to the extent that its proposal was deficient in the staffing area, the agency failed to adequately inform it of this deficiency during discussions. Discussions are adequate where the agency leads offerors into area of their proposals considered deficient. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149.

The record here reflects that the GSA, by letter dated August 15, requested that CSC clarify its proposal with regard to staffing in that it was unclear how CSC would handle preventive maintenance, minor repairs, service calls and watches when its staffing plan did not include electricians, plumbers, carpenters and locksmiths as required by the solicitation. Further, GSA states, and the protester does not dispute, that it orally advised CSC during discussions held on September 19 that its staffing was considered "too low to fulfill the requirements of the RFP." Finally, in its September 20 request for CSC's BAFO, the agency advised CSC that its BAFO "should address the

interpretation that gives effect to all the RFP provisions is that the go/no go factors be evaluated both objectively as a pass/fail mandatory requirement, and qualitatively as a listed evaluation criteria). However, since CSC did not satisfy the staffing go/no-go criterion, CSC was not prejudiced by GSA's failure to qualitatively evaluate the two most important evaluation criteria. Id.

We also need not consider CSC's other contentions regarding the relative scoring of the other technical criteria, e.g., preventive maintenance, or the cost/technical tradeoff, since CSC's proposal was properly found unacceptable.

clarification issues such as (s)taffing . . . which were raised during our discussions."

GSA's thrice repeated references to CSC's staffing plan clearly put CSC on notice that its proposed staffing plan was considered inadequate and in question. CSC thus received sufficient discussions to have advised it that its staffing was considered deficient. See Reflectone Training Sys., Inc., supra.

The protest is denied.


James F. Hinchman
General Counsel