



Comptroller General
of the United States

Washington, D.C. 20548

148015

Decision

Matter of: Service Company of Louis Rogers, Inc.

File: B-248995.2

Date: November 16, 1992

John C. Murphy, Esq., Murphy & Murphy, for the protester.
Peter G. Giella, Esq., Department of the Navy, for the
agency.
Daniel I. Gordon, Esq., Glenn G. Wolcott, Esq., and
Paul Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

In a procurement for ship repairs where solicitation required the successful offeror to provide pier space during a specified 35-day period, agency's determination that protester's contingent proposal of pier space was unacceptable was consistent with the stated evaluation criteria.

DECISION

Service Company of Louis Rogers, Inc. (SCLR) protests the Department of the Navy's elimination of its proposal from the competitive range under request for proposals (RFP) No. N62381-92-R-0208. SCLR maintains that the Navy found SCLR's proposal technically unacceptable on the basis of unstated evaluation criteria.

We deny the protest.

The RFP, issued on February 11, 1992, called for the performance of various repairs to a Navy ship, the USNS VEGA, to be performed during a 35-day period of availability.¹ The

¹The RFP mandated that the work be performed between June 22 and July 27, 1992.

RFP established various evaluation factors, including "manpower requirements," "facilities," "subcontractor participation," and "experience and past performance," and stated that award would be made on the basis of the low priced, technically acceptable proposal, and provided that to be technically acceptable a proposal must be evaluated as acceptable under each evaluation factor.

On or before the March 24, 1992, closing date, the agency received 11 proposals, including one from SCLR. SCLR's proposal stated that it intended to lease pier space for contract performance from the Canaveral Port Authority but failed to indicate that it had a firm commitment for the proposed space. The agency performed an initial review and evaluation of the proposals. By memorandum dated April 16, the chairman of the source selection evaluation board (SSEB) advised the source selection authority (SSA) that SCLR's proposal was deficient in the following areas: "manpower requirements"; "facilities"; and "subcontractor participation." With regard to SCLR's proposed facilities, the Navy was concerned by SCLR's failure to show a firm commitment of pier space during the specified period of availability. By letter dated May 3, the Navy conducted written discussions with SCLR. Among other things, the agency asked SCLR to submit "confirmation of pier lease." In responding to this request, SCLR stated:

"As a point of clarification, SCLR, Inc. and the Canaveral Port Authority have negotiated pier arrangements for the USNS VEGA availability. It is a written policy of the Canaveral Port Authority not to long term reserve piers for ships other than those in the Cruise industry. SCLR has pier space available for the full term of the USNS VEGA availability based on pier schedules projections. Upon contract award SCLR and Canaveral Port Authority will contractually commit pier space." (Emphasis added.)

Upon reviewing SCLR's revised proposal, the agency concluded that it was technically unacceptable. By memorandum dated May 15, the SSEB chairman advised the SSA that SCLR's proposal had been evaluated as technically unacceptable in the

areas of "manpower requirements"; "facilities"; "subcontractor participation"; and "experience and past performance." Based on this evaluation, SCLR's proposal was eliminated from the competitive range.²

On May 22, the contracting officer orally advised SCLR that its proposal had been eliminated from the competitive range. Among other things, the contracting officer noted that the contingent availability of SCLR's proposed facility was unacceptable. Based on this conversation, SCLR filed an agency-level protest. After the agency denied SCLR's agency-level protest, SCLR protested to our Office.

SCLR's protest focuses on the agency's evaluation of its proposed facility. SCLR asserts that the agency improperly found its proposed facility unacceptable in that the solicitation did not expressly state that offerors must guarantee pier availability and, therefore, the agency applied evaluation criteria other than those established by the solicitation.

In evaluating proposals, agencies may apply only those factors specified in the solicitation. Federal Acquisition Regulation (FAR) § 15.608(a). In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's evaluation was reasonable and in accordance with the stated evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Here, we find that the evaluation of SCLR's proposal was reasonable and consistent with the stated criteria.

The RFP specifically stated "contractor must provide facilities, drydock, [and] berthing"; provided that the proposed facility must be available between June 22 and July 27, 1992; and expressly advised offerors that proposals would be evaluated on the basis of the facilities proposed. Despite the RFP requirement that the repair work be performed during a fixed, limited time period, SCLR offered no specific assurance that it would be able to provide pier space during that period. Rather, in response to the agency's request for confirmation that a berth would be available, SCLR replied that the entity from which it planned to obtain space gave preference to cruise ships and indicated that a pier would be available for the Navy ship only if that space

²Three other proposals were also eliminated from the competitive range at this time.

was not needed for a cruise ship.³ Based on the explicit requirements of the solicitation, we believe the Navy's determination that SCLR's proposal was unacceptable due to the contingent availability of its proposed pier was consistent with the stated RFP evaluation factors.⁴

³After being notified of its elimination from the competitive range, SCLR obtained a letter from the Canaveral Port Authority, dated May 22, 1992, stating:

"[T]his letter will serve as a berth guarantee for the USNS VEGA during the time frame of June 22, 1992 thru July 27, 1992. However, if it becomes necessary for the Canaveral Port Authority to utilize this berth for cargo operations during the above time frame, you will be required to move the ship to another berth within the Port at your expense."

The agency responded that, since this letter was submitted after the May 8 closing date for submission of revised proposals, it was not considered in the evaluation. In any event, the Navy notes that if it had considered this letter, the potential for having to move the ship from berth to berth during contract performance would have been unacceptable for a variety of reasons.

⁴We note that SCLR certified in its proposal that it is a small business. While an agency's evaluation of proposed facilities involves a traditional responsibility matter, where a small business's proposal is unacceptable under factors unrelated to responsibility as well as under responsibility-related factors, referral to the Small Business Administration for certificate of competency consideration is not required, Department of the Navy--Recon., B-244918.3, July 6, 1992, 92-2 CPD ¶ ____; in this regard, rejection of a proposal on the basis of an offeror's technical approach is not considered to be related to the issue of responsibility. Id.

Here, both SCLR's initial proposal and its revised proposal were considered unacceptable under several evaluation factors, at least one of which, "manpower requirements," dealt with SCLR's technical approach to task performance which was unrelated to the question of SCLR's responsibility. Regarding this aspect of SCLR's proposal, the agency found that SCLR's manpower hours were far below those of both the other offerors (42 percent below that of the next lowest offeror), and the government estimate (55 percent below). Further, SCLR's manpower estimates did not correlate with its submitted Time Phased Sequence Network, growth absorption, and

(continued...)

The protest is denied.

Robert P. Hinchman
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General Counsel

⁴(...continued)

manpower requirements, as indicated elsewhere in its proposal. The agency considered these deficiencies to strongly indicate that SCLR did not understand the scope or magnitude of the project.

In short, the agency concluded that SCLR's technical approach, as evaluated under "manpower requirements," was unacceptable due to its failure to correlate the manpower it proposed with its Time Phased Sequence Network and other aspects of its proposal, and that this failure demonstrated that SCLR did not comprehend the technical requirements of the project. Our review of the record provides no basis to question the Navy's assessment. Accordingly, since SCLR's proposal was evaluated as technically unacceptable with regard to an evaluation factor unrelated to SCLR's responsibility, the agency was not required to refer the matter to SBA for final disposition. Department of the Navy--Recon., SUPRA.