



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** NES Government Services, Inc.

**File:** B-248638.3; B-247111.4

**Date:** November 24, 1992

Stephen S. Kaye, Esq., Bryan Cave, Esq., for the protester.  
Robert E. Gregg, Esq., Hazel & Thomas, P.C., for JSA  
Healthcare Corporation, an interested party.  
Jonathan Kosarin, Esq., and David H. Turner, Esq.,  
Department of the Navy, for the agency.  
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Protests that agency did not properly evaluate the relative strengths and weaknesses of proposals under two solicitations which provided for a relative evaluation of technical proposals but instead leveled the proposals by finding them to all be equal is denied where record shows that the agency did, in fact, assess strengths and weaknesses in its technical evaluations and where there is nothing in the record which indicates that protester's proposals should have received a higher technical rating which would justify its substantially higher price.
2. Protester is not an interested party to challenge the technical evaluations of awardees' proposals under two solicitations since even if the protester were correct that agency miscalculated those proposals, protester would not be in line for awards as record shows that agency reasonably concluded that, under each solicitation, another firm's lower-priced proposal was technically equivalent to protester's.

### DECISION

NES Government Services, Inc. protests the award of two contracts by the Naval Regional Contracting Center under request for proposals Nos. N00140-92-R-CC02 (RFP No. CC02) and N00140-92-R-CC03 (RFP No. CC03). RFP No. CC02 sought offers for primary care physician services for the Naval Hospital at Camp Pendleton, California and resulted in an award to JSA Healthcare Corporation. RFP No. CC03 sought these services for the Naval Hospital in San Diego,

California and resulted in an award to Government Healthcare Services (GHS). NES, the incumbent contractor for all these services, principally challenges the agency's technical evaluation of the proposals.

We deny the protests in part and dismiss them in part.

#### BACKGROUND

The RFPs, which were for essentially the same services to be provided at different locations, contemplated the award of fixed-priced contracts for a base period and three 1 year option periods. Under both RFPs, awards were to be made to the offeror whose proposal was "determined to be most advantageous to the government considering both technical merit and price." The technical factors to be considered were the following: (1) ensuring physician coverage; (2) organization and implementation plan; and (3) experience in providing physician services. The RFPs also contained a provision as set forth at Federal Acquisition Regulation § 52.222-46, entitled "EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES," which advised offerors that the agency would evaluate their "total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract." Among other things, the submission of the plan would, according to the RFP, aid the agency in assessing the offerors' understanding of the contract requirements and ability to provide "uninterrupted high-quality work."

The Navy received 15 proposals in response to RFP No. CC02 and 14 in response to RFP No. CC03 by the January 15, 1992, closing dates. For each procurement, the agency established a source selection evaluation board to evaluate technical proposals. The members evaluated each of the initial proposals by assigning one of the following adjectival ratings for each of the three technical evaluation factors: (1) Highly Acceptable (2) Acceptable; or (3) Unacceptable. These evaluations also contained short narratives supporting the rating given under each factor.

Initially, for each procurement, the agency included four firms in the competitive range and excluded NES based primarily on its high price. Due, in part, to a protest by NES of its exclusion from the competitive range, the agency reconsidered its position and included four additional firms, including NES, in both competitive ranges. The agency then requested and received best and final offers (BAFO) from eight firms, including NES under each of the two RFPs.

Under RFP No. CC02, the evaluators assigned an overall rating of "acceptable" to five of the eight BAFOs. Both the awardee, JSA, and NES received an "acceptable" rating under each of the three evaluation factors. Two other firms, GHS and Coastal Government Services, Inc., submitted BAFOs which received a rating of "highly acceptable" under one of the three evaluation factors. The final overall technical rating for each of these firms, however, was "acceptable." JSA submitted the low-priced offer of \$5,303,993, while NES' price was fourth low at \$6,204,149. GHS and Coastal were lower priced than NES. The contracting officer reviewed the BAFOs and the findings of the evaluators and determined that none of the offerors offered any greater technical benefit than any other. Based on this conclusion that the proposals were technically equivalent, the agency awarded the contract to JSA, the low-priced offeror.

Under RFP No. CC03, the evaluators assigned an overall rating of "acceptable" to six of the eight BAFOs received. In fact, the evaluators rated all six "acceptable" proposals "acceptable" under all of the evaluation factors. Of the firms rated "acceptable," GHS submitted the low-priced offer of \$6,972,253, while NES' price was fourth low at \$8,301,108. Again, two other offerors, Coastal and JSA, submitted proposals that were considered by the agency to be "acceptable" and which were lower priced than NES'. The contracting officer then considered all the available information and concurred with the evaluators that the six proposals were technically equivalent. Accordingly, the agency awarded the contract to GHS on the basis of its low-priced proposal.

## DISCUSSION

### Failure to Follow Evaluation Scheme

NES' primary contention is that the Navy improperly converted these procurements from ones in which technical merit was more important than price into ones in which the low-priced, technically acceptable offerors were awarded the contracts. NES points out that the solicitations provided that technical merit of the proposals would be considered more important than price and argues that the agency acted improperly by failing to assess the relative strengths and weaknesses of proposals. The protester asserts that it was unreasonable and arbitrary for the agency to find that "all offerors were technically equal."

We point out initially that, contrary to NES' assertions, the record does not support its position that the Navy "merely made acceptability determinations" or that it found all offerors to be technically equal. The initial proposal evaluations show that all but one offeror under both

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procurements received an "unacceptable" rating under at least one factor. The evaluators found that two offerors under RFP No. CC02 submitted proposals which were "highly acceptable" in at least one area. Although the evaluators under RFP No. CC03 did not consider any of the initial proposals "highly acceptable" under any of the factors, they did specifically note that NES' proposal offered a "beneficial excess" under the factor concerning ensuring physician coverage. Because the agency also noted some weaknesses under this factor, it considered NES' proposal only "acceptable."

Concerning the final evaluations, under RFP No. CC02, the agency found that three of the proposals were "unacceptable" while three contained areas which were "highly acceptable." NES' proposal received "acceptable" rating for each factor and therefore was rated "acceptable" overall. None of the proposals, however, was considered "highly acceptable" overall. With respect to RFP No. CC03, the agency found that two of the eight proposals were "unacceptable."

Then, under each of the solicitations the contracting officer reviewed the evaluations of the "acceptable" offerors. Under RFP No. CC02, he concluded that despite the "highly acceptable" rating assigned to Coastal under the experience factor and the same rating given to GHS under organization, these proposals did not offer any particular benefit not offered by the other "acceptable" firms and thus concluded that each of the five "acceptable" offerors were, in essence, technically equivalent. Under RFP No. CC03, the contracting officer reviewed the ratings given to the six offerors considered to be "acceptable" overall and concluded that since all six had received identical "acceptable" ratings under all three of the technical factors, that they were for all practical purposes equivalent from a technical standpoint.

We have no basis to object to the technical evaluation of the proposals merely because the agency concluded that several proposals were essentially equal. See Merdan Group, Inc., B-231880.3, Feb. 28, 1989, 89-1 CPD ¶ 210. The record shows that the offerors here were experienced contractors whose proposals appeared to have benefitted from comprehensive agency discussions. Under such circumstances, price may become the determinative factor even where the solicitation evaluation scheme assigns price less importance than technical factors. Id. In our view, there is nothing inherently improper about these evaluation results or in an agency choosing to take advantage of a lower-priced, technically equivalent proposal. Moreover, even assuming the protester should have been considered slightly superior to its competitors--there is nothing either in the record or in NES' protest submissions which would lead us to that

conclusion--we have upheld agency determinations that technical proposals were essentially equal despite an evaluation point score differential of as much as 15.8 percent.<sup>1</sup> Morris Guralnick Assoc., Inc., B-218353, July 15, 1985, 85-2 CPD ¶ 50.

#### Technical Evaluations

In both protests, NES also specifically challenges the evaluation of the three offerors who submitted lower-priced proposals than it. Concerning the offers of JSA and GHS, the protester asserts that under both RFPs, these firms proposed below market rates for their physicians and argues that the agency should have downgraded the proposals for what was in NES' view their unrealistic rate structures. NES also complains about the technical evaluation of Coastal's proposals under both RFPs, which the agency considered more advantageous than NES' based upon their technical equivalence and lower price. In addition, NES argues generally that under both RFPs, the matter of professional compensation was not properly factored into the technical evaluation. Because we have no basis to object to the evaluations of NES' or Coastal's proposals under either procurement, for the reasons discussed below, we need not address the protester's allegations that the proposals of the awardees, JSA and GHS, were misevaluated.

#### RFP No. CC02

NES objects specifically to the agency's evaluation of its own and Coastal's proposals under the evaluation factor relating to experience. The protester points out that Coastal received a final evaluation rating of "highly acceptable" under this factor. In this regard, the record shows that the evaluators noted that Coastal has had experience with "numerous successful Navy healthcare contracts" which made it "very familiar with the military medical treatment facility system." The contracting officer, however, in his final technical evaluation

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<sup>1</sup>NES also argues that the agency failed to properly document its technical evaluations and selection decisions. These arguments, too, are based on the fact that several proposals received the same ratings under various factors. Based on our review of the evaluation records, which as demonstrated above, identified strengths and weaknesses of proposals, we think that while the evaluators' narratives describing the proposals were often repetitious and could have been more insightful, the evaluations were adequately documented. In light of those results, we have no basis upon which to object to the award decisions.

discounted this "beneficial excess" and assigned a rating of "acceptable" to Coastal under this factor.

While the protester argues that it was unreasonable for Coastal to receive a "highly acceptable" rating, in light of the contracting officer's reduction of the rating to "acceptable," for purposes of the selection, the question for our review is whether the agency could have reasonably concluded that Coastal's proposal was "acceptable" under this factor. In connection with the "acceptable" rating, NES notes that this was the same rating it received under this factor and argues that it should have received a higher rating because its proposal listed a greater number of contracts than Coastal's.

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. Professional Safety Consultants Co., Inc., B-247331, Apr. 29, 1992, 92-1 CPD ¶ 404. In reviewing an agency's technical evaluation, we will examine the record to ensure that the evaluation was reasonable. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Id.

Based on our review of the record, we cannot conclude that the agency's judgment that the experience of these firms both fell under the category of "acceptable" was unreasonable. The RFP did not state that experience would be evaluated based on the number of contracts performed, the only basis upon which the protester suggests it should have been considered superior. See Data Flow Corp., et al., 62 Comp. Gen. 506 (1983), 83-2 CPD ¶ 57. Where, as here, there are several ways in which proposals can be measured against a broadly stated experience factor, it is up to the agency to determine which measurement or combination of measurements should be used to evaluate the proposals. AAA Eng'g and Drafting, Inc., B-204664, Apr. 27, 1982, 82-1 CPD ¶ 387.

The record shows that both NES and Coastal listed numerous contracts with military medical facilities. While NES listed more contracts, Coastal has substantially more current experience performing services at Naval Hospitals than NES. More important, however, concerning the quality of the services provided, there is nothing in the record to suggest that Coastal had any problems with performance under the contracts.<sup>2</sup> The agency points out, on the other hand,

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<sup>2</sup>The protester initially alleged that Coastal had encountered substantial difficulties in performing certain  
(continued...)

that while NES' performance has been adequate as incumbent, it had some problems with physicians reporting for work late and with certain physicians' medical licenses. We note, in this regard, that the RFP advised that the agency would not restrict its consideration of past performance quality to the information provided by the offeror. Consequently, we find the protester's contention that it offered significantly superior experience to that of Coastal to be without support. In our view, NES has merely disagreed with the agency's evaluation under the experience factor and we have no basis upon which to find the agency's conclusions to be unreasonable. Environmental Health Research & Testing, Inc., B-237208, Feb. 9, 1990, 90-1 CPD ¶ 169. We therefore deny this protest ground.

RFP No. CC03

NES objects to the technical evaluation of its own and Coastal's proposal under the "experience" factor. The agency has responded fully to this allegation in its report. Unlike the evaluation under RFP No. CC02, the protester has not rebutted the agency's position concerning the evaluation in its comments. Since the agency's conclusion under this RFP was substantially the same as its conclusion under RFP No. CC02, which we have concluded was reasonable, we see no reason to consider the matter in detail. We therefore deny this aspect of NES' protest for the reasons stated above.

NES next argues that its proposal was miscalculated under the evaluation factor concerning physician coverage. The protester contends that since its "TQM Initiative" was initially considered by the evaluators to be a "beneficial excess," it should have received a "highly acceptable" rating. Even assuming that such a rating was warranted in the evaluators' view, the contracting officer subsequently found that this approach, which was not required by the RFP, did not provide any significant benefit to the Navy beyond what was required. While the protester apparently disagrees with this conclusion, it has not disputed the agency's position that the approach was not required, has not shown that the initiative would, in fact, significantly benefit the Navy, and has not otherwise demonstrated that the contracting officer's position lacks a reasonable basis.

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<sup>2</sup>(...continued)

of its past contracts. The agency responded to this allegation by stating that Coastal's performance history is well known to the agency and that it is unaware of any problems with that firm's performance. Since NES has failed to rebut the agency, we deem the allegation abandoned. Information Ventures, Inc., B-247479, May 22, 1992, 92-1 CPD ¶ 467.

We therefore have no reason to object to the agency's conclusion in this regard.

#### Ratings of Coastal

We find that the Navy reasonably concluded under both RFPs that NES and Coastal were rated equally under the experience factor and we do not agree with NES that it deserved a higher rating because of its "TQM Initiative" under RFP No. CC03. Further, the protester has not contested either its own or Coastal's evaluation on any other ground. We thus have no basis to disagree with the Navy that Coastal's proposals were equal to NES' from a technical standpoint. Further, NES has not argued that Coastal's proposed compensation for its physicians should have resulted in the downgrading of its proposal. Therefore, we have no basis upon which to object to the Navy's conclusion, based upon Coastal's lower price and equal technical rating, that Coastal was ranked higher than NES under each of the two RFPs.

#### Standing to Challenge Evaluation of Awardees' Proposals

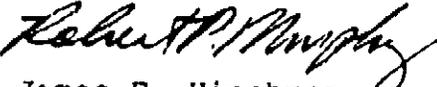
Under our Bid Protest Regulations, we will only consider a protest by an interested party, *i.e.*, an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or by the failure to award a contract. 4 C.F.R. § 21.0(a) (1992); AMEWAS, Inc.--Recon., B-247656.2, June 24, 1992, 92-1 CPD ¶ 541. Where there are intermediate parties of greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our Regulations. Rantec Microwave & Elec., Inc.--Recon., B-241151.2, Feb. 28, 1991, 91-1 CPD ¶ 227. A party is not interested to maintain a protest if it would not be in line for award if its protest were sustained. *Id.* Here, the protest record establishes that if GHS and JSA were not selected under either RFP, Coastal, not NES, would be in line for the award. Thus, NES is not an interested party to maintain its protest allegations against the evaluation of those proposals. See Hydroscience, Inc., B-227989; B-227989.2, Nov. 23, 1987, 87-2 CPD ¶ 501. We therefore dismiss these protest grounds.<sup>3</sup> See Aviation Sys. Mfg., Inc.--Recon., B-241180.2, Feb. 1, 1991, 91-1 CPD ¶ 104.

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<sup>3</sup>In its comments on the agency's report, the protester also argues that GHS' proposal should have been downgraded for failure to satisfy all of the RFP requirements. For the same reasons discussed above, NES is not an interested party to challenge the technical evaluation of GHS in this regard.

We likewise see no point in considering NES' argument that the Navy's technical evaluations were flawed because of the agency's failure to properly consider all offerors' proposed physician compensation. Even if we were to agree with the protester that the agency should have given greater consideration to the offerors' proposed compensation, since NES has not alleged that Coastal's proposed compensation rate was inadequate or that Coastal's proposals should have been otherwise downgraded because of its compensation plan, we fail to see how the protester could have been impacted by the alleged improprieties in the evaluation of the other offerors. Again, because of the ranking of Coastal, NES is simply not an interested party to raise this concern.

The protests are denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel