



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** G.O. Parking, Inc.

**File:** B-250466

**Date:** January 5, 1993

Phillip A. Turner, Esq., Turner, Latz & Olmstead, for the protester.

Steven A. Warshauer for Standard Parking Corporation, an interested party.

Charles A. Walden, Esq., Drug Enforcement Administration, Department of Justice, for the agency.

Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where proposal fails to comply with material solicitation requirement for a parking facility located within a 2-block area of government office and fails to include any information that responds to the solicitation's self-parking requirement, contracting agency reasonably concluded the offer is technically unacceptable and should be excluded from the competitive range.

### DECISION

G.O. Parking, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DEA-92-R-0014, issued by the Drug Enforcement Administration (DEA), Department of Justice, for 50 reserved parking spaces in Chicago, Illinois.

We deny the protest.

The agency states that it needed a parking facility within 2 blocks of its offices because agents are required to transport sensitive and/or valuable items to and from their vehicles. The agency also states that it required that the parking facility provide for self-parking so that the vehicles assigned to the agents are available for instant response and so that the agents can secure their vehicles by locking them after parking. As a result, the two most important evaluation factors of the five listed in section M.3 of the solicitation and their respective weights were the capability to provide for self-parking (30 points) and the capability to provide a facility within a 2-block

056247/ 148337

area of the Federal Building located at 219 South Dearborn, Chicago, Illinois (30 points).

Section L.6 of the solicitation, entitled Proposal Preparation Instructions, advised offerors to prepare technical proposals that responded to the requirements listed in section C; section C contained the evaluation factors that were listed in section M. Nevertheless, G.O.'s proposal listed the address of a parking facility that is located 4-1/2 blocks away from the Federal Building and it lacked any discussion concerning G.O.'s capability to provide self-parking. As a result, the agency concluded that G.O.'s offer was technically unacceptable and excluded it from the competitive range.

G.O. contends that its offer was improperly excluded from the competitive range because, as the incumbent contractor, it has stored DEA vehicles without any complaints about the company's performance. The protester also claims that the rejection of its proposal and the award to a higher-priced offeror is improper because the agency is required to obtain quality service at the lowest overall cost to the government. Finally, the protester contends for the first time in its comments on the agency report that the 2-block proximity requirement "effectively eliminates all of the competitors for this contract."

As a preliminary matter, some of the protester's allegations are untimely objections to RFP requirements. In its comments on the agency report, the protester specifically challenges the RFP's proximity requirement and in a general sense challenges other provisions in the solicitation as well. For example, the protester's argument that the agency should have included its proposal in the competitive range based on its incumbent status and because its current lot is adequate is in essence an allegation that it was improper for the agency to require a parking facility that is either located closer to the Federal Building than its facility or one that provides self-parking. Since the RFP specifically listed the 2-block proximity requirement and the self-parking requirement as evaluation factors, the protester should have raised these contentions prior to the time set for receipt of proposals rather than waiting to challenge the requirement during the latter stages of the protest process. 4 C.F.R. § 21.2(a)(1) (1992); Kenneth L. Latham, B-245137, Dec. 18, 1991, 91-2 CPD ¶ 559.

With regard to the exclusion from the competitive range of the protester's proposal, the evaluation of proposals and the resulting determination as to whether an offer is in the competitive range are matters within the discretion of the contracting agency. Consequently, we will review an evaluation solely to ensure that it was reasonable and

consistent with the solicitation and applicable procurement laws and regulations. Discount Machinery & Equip., Inc., B-249321, July 22, 1992, 92-2 CPD ¶ 44. Offers that are technically unacceptable as submitted and would require major revision to become acceptable are not required to be included in the competitive range for discussion purposes. Id.

Here, the agency found, and the protester now concedes, that the facility it proposed is located beyond the 2-block area required by the RFP; G.O.'s proposal also failed to state whether or not it intended to allow self-parking. These were the two most important evaluation factors and were worth 60 of the 100 points allocated for technical merit. In a negotiated procurement, a proposal that fails to conform to a material solicitation requirement is unacceptable and may not form the basis for award. Consulting and Program Mgmt., 66 Comp. Gen. 289 (1987), 87-1 CPD ¶ 229. We have no basis to object to the agency's rejection of the protester's proposal as technically unacceptable on this basis.

With respect to the protester's failure to address the self-parking requirement, the RFP required offerors to submit technical proposals adequate on their face to demonstrate how they proposed to comply with the contract's specifications; therefore, it was clearly G.O.'s responsibility to submit a technical proposal that was adequately written. Marvin Eng'g Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15. A contracting agency has no obligation to include a proposal in the competitive range and give the offeror an opportunity to furnish missing information where, as here, the offeror submits an initial proposal that is technically unacceptable due to the omission of material information. Union Natural Gas Co., B-231461, Sept. 13, 1988, 88-2 CPD ¶ 231.

The protester's reliance on the fact that it submitted a lower price than the awardee is misplaced because a technically unacceptable offer can be excluded from the competitive range irrespective of its lower offered price. See TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37. The protester's proposal failed to demonstrate compliance with the solicitation's two most important evaluation factors and, thus, only received 40 of the 100 points allocated for technical merit. Since the deficiencies in G.O.'s proposal

made it so significantly inferior to the other proposals, it was properly excluded from the competitive range and its low price is irrelevant.

The protest is denied.



*for* James F. Hinchman  
General Counsel