



Comptroller General
of the United States

Washington, D.C. 20548

Van Schaik
149686

Decision

Matter of: Monopole, S.A.

File: B-252745

Date: July 23, 1993

Daniel Delorme for the protester.
C.J. Collins, Jr., Esq., Department of the Navy, for the agency.
John Van Schaik, Esq., and Daniel I. Gordon, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of exclusion of offeror's proposal from the competitive range is denied where the agency reasonably concluded, in accordance with the solicitation evaluation criteria, that the proposal was technically unacceptable since it lacked information required by the solicitation and since it would require substantial additional information in order to become acceptable--including resumes of proposed personnel, a list of facilities at or near ports where ships are to be serviced under the contract and evidence of a contractual relationship with the firm which the offeror proposes as a joint venturer.

DECISION

Monopole, S.A. protests the award of a contract to Med Services under request for proposals (RFP) No. N68171-92-R-0093, issued by the Department of the Navy for husbanding services for Navy ships at nine ports on the French Riviera for a base year and 4 option years.¹

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

The RFP contemplated the award of a firm, fixed-price, indefinite quantity, indefinite delivery contract to the offeror or offerors whose proposals, conforming to the solicitation, were most advantageous to the government,

¹The required services and supplies include trash and waste removal, crane services, transportation, telephones, office machine repairs, laundry and dry cleaning, cargo drayage services and fresh potable water.

price and other factors considered.² The RFP included three evaluation factors, listed in descending order of importance: (a) husbanding fees and other line item prices; (b) personnel, facilities, and management approach; and (c) husbanding services experience. Each of the evaluation factors included several subfactors. Thus, personnel, facilities, and management approach were each subfactors. Under the personnel subfactor, the RFP required offerors to submit resumes for bilingual personnel and stated that the agency would evaluate the experience of the proposed personnel as well as their fluency in English and French. For the facilities subfactor, the RFP required offerors to describe the location of their offices and facilities in relation to the ports at which the contract services would be provided, and stated that the proximity of the offices to the ports would be evaluated. The RFP stated that, after an assessment of the overall price, including options, of each offer, the agency would assign price scores, with the low price proposal receiving the highest score and the others receiving proportionately lower scores.

The Navy received three proposals in response to the RFP. In evaluating the proposals, the agency allowed a maximum score of 60 points for price and 40 points for technical. The three proposals were priced as follows and were assigned the following scores:

	Total Price	Scores		Total
		Price	Technical	
Monopole	\$3,273,664	60	5	65
Med Services	\$4,506,924	49	40	89
Sigma Mare	\$5,207,235	42	37	79

The agency created a competitive range consisting of the proposals of Med Services and Sigma Mare. Monopole's proposal was excluded from the competitive range based on a determination that it was technically unacceptable and could not be made acceptable without major revisions. For instance, the evaluators found that Monopole's proposal did not include resumes of the personnel that would perform the contract. Although the firm's proposal listed five individuals under the heading "Personnel," the proposal stated that these individuals are all members of Monopole's board of directors and did not indicate the duties these individuals would perform under the contract. In addition, the Navy evaluators noted that, while Monopole's proposal stated that the members of its board of directors are fluent in English, the proposal included no indication that the firm's employees are bilingual.

²The RFP permitted multiple awards.

The evaluators also noted that while Monopole has an office in Antibes, across from the port area, the proposal did not indicate how services would be provided at the other ports covered by the contract. In addition, the evaluators were concerned that Monopole's proposal failed to provide acceptable evidence of its ability to make arrangements to rent, purchase or otherwise have available the facilities and equipment necessary to provide services in all ports covered by the contract. Also, although Monopole's technical proposal stated that it would perform the contract as a joint venture with another firm, Compagnie Méridionale de Navigation (CMN), the evaluators noted that Monopole's proposal included no written commitment from CMN indicating that it would act in this capacity. The evaluators also found that Monopole submitted the same management proposal that CMN had submitted for a husbanding contract 3 years earlier and that the proposal was out of date and included areas not covered by the RFP. The evaluators also found that Monopole does not have husbanding experience in the nine ports covered by the RFP and that its only related experience was a packing and crating contract and a bread and pastry contract for the Navy in 1991.

The evaluators also concluded that Monopole's prices indicated a lack of understanding of the contract requirements. In this respect, the agency noted that Monopole's prices failed to reflect a price increase due to a new tax on trash removal, that Monopole's prices for cargo drayage services were extremely unbalanced, and that some prices proposed by Monopole on this RFP are approximately 75 percent lower than those proposed by CMN 3 years ago for the same services.

The Navy conducted discussions and on March 8 requested best and final offers (BAFO) from the two competitive range offerors. On March 15, the Navy notified Monopole that its proposal was excluded from the competitive range and awarded the contract to Med Services.

Monopole disputes most of the Navy's criticisms of its proposal and argues that it should not have been found unacceptable and excluded from the competitive range. Specifically, concerning the lack of resumes in its proposal, Monopole states that it did not believe that it was necessary to provide resumes for personnel not yet committed to Monopole. In addition, with its comments on the agency report, Monopole submitted resumes of prospective staff members. According to Monopole, these resumes indicate that all of its proposed staff members are either fluent in English or are bilingual and that the resume of its proposed contract manager shows that its manager would have the experience and management capabilities necessary to supervise the contract.

With respect to its joint venture with CMN, Monopole maintains that CMN gave Monopole "every assurance concerning their assistance and the full benefit of their know-how." According to the protester, CMN has considerable ship husbanding experience and Monopole's relationship with that firm gives Monopole the ability to manage the contract and to provide required services for ship visits.

With respect to its lack of offices in the ports where services are to be provided under the contract, Monopole states that it would organize facilities for each ship visit in the same manner that the incumbent contractor has done and that its relationship with CMN "is sufficient evidence of our ability to make explicit arrangements available at the time of contract award." Monopole argues that it, like Med Services, would have to rely heavily on subcontractors to perform most of the work required under the contract and that most subcontractors currently working for the incumbent also would work for Monopole. In addition, Monopole states that CMN provided it with a list of subcontractors which it would deal with to provide services under the contract and that Monopole "checked every single firm on this list and took all measures to ensure our future relationship with the above mentioned subcontractors."

Monopole also argues that its prices for cargo drayage services were not unbalanced and maintains that errors that it made in its initial submission, and which it subsequently corrected, must be responsible for the agency's belief that Monopole's prices were unbalanced. Also, Monopole argues that the agency should not have considered it to be a deficiency that its prices were approximately 75 percent lower than the prices submitted 3 years ago by CMN for the same work. According to the protester, CMN was not very interested in the husbanding services contract 3 years ago and therefore did not attempt to make a low bid for that contract. In addition, Monopole argues that the 75 percent difference in prices is not significant and, in any event, should not have been a basis for excluding Monopole's proposal from the competitive range, but rather, should have resulted in price negotiations.

In reviewing protests against an agency's technical evaluation and decision to eliminate a proposal from the competitive range, we review the record to determine whether the agency's judgments were reasonable and supported by the record and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or regulations. Integrity Private Sec. Servs., Inc., B-249910, Dec. 18, 1992, 92-2 CPD ¶ 424. The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise

of discretion of the procuring agency, National Sys. Mgmt. Corp., 70 Comp. Gen. 443 (1991), 91-1 CPD ¶ 408. However, the Federal Acquisition Regulation (FAR) provides that the competitive range must include all proposals that have a reasonable chance of being selected for award and that any doubt as to whether a proposal is in the competitive range should be resolved by inclusion. FAR § 15.609(a).

Generally, a proposal is to be included in the competitive range if it is technically acceptable or reasonably susceptible to being made acceptable through discussions. ALM, Inc.; Technology Inc., B-217284; B-217284.2, Apr. 16, 1985, 85-1 CPD ¶ 433. Nonetheless, as a general rule, an agency need not include in the competitive range offers that are unacceptable as submitted and which would require major revisions to become acceptable. Integrity Private Sec. Servs., Inc., supra. The record here supports the agency's determination that Monopole's proposal would have required major changes and, under the circumstances, its exclusion from the competitive range was reasonable.

As explained, the Navy found numerous deficiencies in Monopole's proposal concerning personnel, facilities and understanding of the requirements. In response to many of these alleged deficiencies, Monopole has submitted information to this Office that was not included in the proposal evaluated by the Navy. For instance, as noted above, with its comments on the agency report, Monopole submitted resumes of prospective personnel for the contract and letters which the firm maintains demonstrate the commitment of CMN to work with Monopole as a joint venturer. Apparently, Monopole expects that this additional information, which was not included with its proposal, will be evaluated now and that, on that basis, its proposal should be determined to be technically acceptable and included in the competitive range.

Proposals must generally be evaluated solely on the basis of information contained therein, see SeaArk Marine, Inc., B-248755, Sept. 21, 1992, 92-2 CPD ¶ 193, and it is incumbent upon an offeror to submit sufficient information with its proposal to demonstrate its acceptability. Allied Mgmt. of Texas, Inc., B-249086, Oct. 19, 1992, 92-2 CPD ¶ 251. The additional information which Monopole submitted to this Office should have been submitted with its proposal since that information was required by the RFP.

For instance, while the RFP required that proposals include a description of the qualifications of contractor personnel, the only personnel identified in Monopole's proposal were the members of the company's board of directors. Although its submissions to this Office included resumes of other

individuals, this information was not available to be evaluated by the Navy and therefore could have had no impact on the evaluation. See SeaArk Marine, Inc., supra.

In addition, while the RFP required that proposals describe the location of contractor offices and facilities in relation to the ports at which the contractor will provide services, Monopole's proposal, aside from indicating the location of its office in Antibes, did not include this information. Although Monopole now argues that it would organize facilities at the time of each port call, the RFP clearly required the submission and evaluation of information on the location of facilities to be used under the contract. Monopole's proposal did not include this information. Moreover, even if we were to consider Monopole's submissions to this Office, the firm has not demonstrated that it has facilities available at the ports at which services are to be provided. In this respect, Monopole still has not listed facilities at or near the various ports to be serviced under the contract; rather, the firm simply states that it has local offices and it would organize local facilities for each ship visit.

Monopole also argues that, contrary to the judgment of the evaluators, as a result of its arrangement with CMN, Monopole has the ability to manage the contract and to provide services in all required ports. In addition, Monopole included with its comments on the agency report a series of letters between Monopole and CMN which the protester argues "evidence our full cooperation."

Here again, Monopole is attempting to submit information beyond that included in its proposal in order to demonstrate that its proposal should have been considered technically acceptable. Monopole does not argue that it has the experience and the capability to perform the contract without the assistance of CMN. Under the circumstances, any evidence of a commitment by CMN to provide services to Monopole if it is awarded the contract should have been submitted with Monopole's proposal. Allied Mgmt. of Texas, Inc., supra.

In any event, all that Monopole has submitted to this Office is a series of letters between it and CMN which do not evidence a legal commitment by CMN to provide any particular services to Monopole, should Monopole receive the contract. Rather, those letters merely indicate that CMN provided Monopole with a copy of a technical proposal and that the two companies had cooperated in certain matters. These letters, even had they been submitted with Monopole's proposal, do not evidence a legal commitment by CMN to provide Monopole with the services required to perform the Navy contract.

Monopole's failure to include in its proposal information required by the RFP reasonably resulted in a determination that the proposal was technically unacceptable. In addition, since substantial additional information would be required for Monopole's proposal to become acceptable--including resumes of proposed personnel, a list of facilities at or near each of the ports at which ships are to be serviced and evidence of a contractual relationship with CMN indicating a commitment by that firm to assist Monopole in providing the required services--Monopole's proposal would require substantial revisions to become acceptable. Accordingly, we conclude that Monopole's proposal was reasonably excluded from the competitive range. Under the circumstances, we see no need to consider whether Monopole's price proposal provided additional grounds for excluding Monopole's proposal from the competitive range.¹

Monopole also protests that the Navy failed to promptly notify it that its proposal had been eliminated from the competitive range. The Navy decided to exclude Monopole's proposal from the competitive range on January 29, yet did not notify the firm until March 15, when the award was made. The Navy explains that the failure to notify Monopole was due to "clerical oversight." While contracting agencies are required to notify offerors of the exclusion of their

¹Monopole also argues that the Navy should not have considered Med Services' proposal since Med Services did not exist as a legal entity when it submitted its proposal in September 1992. In this respect, Monopole notes that Med Services registered with the French government only on March 10, 1993, and argues that the firm did not have legal existence before that date. In addition, Monopole contends that Forville Primeurs has held the contract for these services for all except a few of the past 34 years and therefore has a de facto monopoly. The protester notes that Med Services, the current awardee, is owned by Forville Primeurs and argues that the award to Med Services will allow the monopoly to continue. Monopole is not an interested party to advance these arguments. A party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1993). Here, given the exclusion of Monopole's proposal from the competitive range as technically unacceptable, if we were to sustain Monopole's protest of Med Services' eligibility for award, Sigma Mare, the other offeror whose proposal is in the competitive range, would be in line for award. Under these circumstances, since Monopole would still not be eligible for award, we dismiss these protest grounds. Quarles Janitorial Servs., Inc., B-251095; B-251095.2, Mar. 3, 1993, 93-1 CPD ¶ 197.

proposals from the competitive range at the earliest time practicable, FAR § 15.609(c), a failure to do so where, as here, the propriety of the contract award is otherwise not questionable, does not establish a basis to sustain a protest. Zell Partners, Ltd., B-248489, Aug. 31, 1992, 92-2 CPD ¶ 141.

The protest is dismissed in part and denied in part.



for James F. Hinchman
General Counsel