



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jack Faucett Associates

File: B-253329

Date: September 7, 1993

James H. Roberts, III, Esq., Manatt, Phelps & Phillips, for the protester.
Rowena Conkling, Esq., Department of Transportation, 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

Exclusion of proposal from the competitive range is proper where the cumulative effect of the omissions and conflicting information in the protester's cost proposal would require major revision in order for the proposal to be acceptable.

DECISION

Jack Faucett Associates protests the rejection of its proposal under request for proposals (RFP) No. DTRS-57-92-R-00026, issued by the Department of Transportation for operations research and analysis. The protester contends that the agency improperly excluded its proposal from the competitive range.

We deny the protest.

On April 1, 1992, the agency issued the solicitation for the award of multiple cost-plus-fixed-fee contracts for technical support services in the following functional areas: (1) operations research and analysis; (2) vehicle, guideway, and terminals; (3) information systems engineering; and (4) communication, navigation, and surveillance.¹ The agency explains that the contractors will provide support and expertise to assist decisionmakers in assessing risks, cost/benefits, economic effects, and consequences of alternative public policy initiatives or regulatory actions. The RFP required offerors to submit a technical proposal and a cost/business proposal. The RFP stated that while the technical proposal was the most important element in the

¹The evaluation of the proposals submitted for services other than operations research and analysis are not at issue in the protest.

overall evaluation, offerors should not minimize the importance of the cost/business proposal.

The agency instructed offerors to prepare their cost/business proposals in sufficient detail to permit thorough and complete evaluation without additional correspondence or communication. The RFP also advised offerors that their proposals may be rejected if they failed to contain the required schedules or information. To facilitate proposal preparation, the agency included in the solicitation separate checklists for the offerors and their proposed subcontractors to use.

The agency advised offerors that their proposed costs would be evaluated generally to determine whether they were fair, reasonable, and realistic. The cost evaluation criteria listed were as follows:

"1. Appropriateness of the labor rates for the labor categories for the contract. Completeness of documentation supporting the proposed rates and methodology of rate calculation.

"2. Reasonableness and realism of the proposed annual escalation factor for labor costs.

"3. Reasonableness and realism of all proposed indirect rates. Clarity and completeness of supporting documentation.

"4. Reasonableness of subcontract proposals. Completeness of subcontract packages.

"5. Reasonableness and fairness of proposed fixed fee as compared to weighted guidelines. Appropriateness of offeror's contract risk or special factors information provided.

"6. The extent to which the proposal, generally, appears properly stated, well documented and the costs are considered fair, reasonable, and realistic."

The RFP stated that the agency would evaluate the offerors' respective business/management approaches in terms of overall reasonableness, clarity, and quality. The following evaluation criteria were listed:

1. The adequacy of the offeror's purchasing system, including the ability to manage competitive and other subcontracting;

2. The adequacy of the offeror's cost management program;

3. If applicable, the adequacy and reasonableness of the offeror's small and small disadvantaged business subcontracting plans.

The agency received a number of proposals, including the protester's, by the closing date. The source evaluation board established a technical evaluation team and a cost evaluation team. After initially reviewing the protester's technical proposal, the technical evaluation team determined that Faucett's technical proposal should be in the competitive range. However, based on the cost evaluation team's review of Faucett's cost proposal, the SEB unanimously voted to exclude Faucett's proposal from the competitive range. This decision was based on the SEB's conclusion that Faucett failed to provide consistent staffing between the technical and the cost proposals, as well as the determination that Faucett's proposal failed to include the required completed schedules and narratives in its cost proposal, so that rewriting the proposal would be necessary in order to make it acceptable.

The protester contends that the agency's determination that its proposal was outside the competitive range based on informational deficiencies was improper. Although the protester concedes that its proposal contained informational deficiencies, the protester argues that the deficiencies were minor and readily correctable as evidenced by its submission of additional information to the agency within eight business days after being advised that its proposal was excluded from the competitive range.² The protester argues that rather than concluding that the firm needed to rewrite its proposal in order to be considered acceptable, the agency should have held discussions with the firm.

An agency is not required to include an offeror in the competitive range when the proposal, to be acceptable, would have to be revised to such an extent that it would be

²The protester initially also argued that the agency's evaluation was improper because it was biased against small business contractors and that the agency failed to consider the supplemental information that the protester submitted upon learning that its proposal was eliminated from the competitive range. The agency rebutted these arguments in its agency report. The protester, in its comments on the agency report, did not address these issues; therefore, we deem them abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

tantamount to a new proposal. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. Even where individual deficiencies may be susceptible to correction through discussions, the aggregate of many such deficiencies may preclude an agency from making an intelligent evaluation, and the agency is not required to give the offeror an opportunity to rewrite its proposal. Ensign-Bickford Co., B-211790, Apr. 18, 1984, 84-1 CPD ¶ 439. Based on our review of the record, we conclude that the agency reasonably excluded Faucett's proposal from the competitive range.

The informational deficiencies found in Faucett's proposal all related to specific and detailed RFP cost evaluation criteria. While the agency cited, and our review establishes, numerous deficiencies in Faucett's proposal, the protester challenges only some of them; for the ones it elected to challenge, the protester's objection rests primarily on the short time it took, after learning that its proposal had been rejected, for the protester to furnish additional information. Contrary to the protester's suggestion, the time necessary to furnish information originally omitted from an offeror's proposal is not determinative of whether the omitted information is material; rather, in determining the materiality of informational deficiencies, we look at such things as whether the RFP called for detailed information and the nature of the deficiencies. See Source AV, Inc., supra.

The record establishes, and the protester does not refute, that the protester and several of its proposed subcontractors either failed to furnish basic cost information or failed to provide consistent information despite the fact that the RFP required submission of specific information responding to the stated cost evaluation criteria. Under the appropriateness of labor rates evaluation factor, the protester failed to establish the basis for its proposed direct rates despite the fact that offerors were required to submit documentation to support the proposed rates and the methodology of rate calculation. The protester and many of its proposer's subcontractors also failed to state whether uncompensated overtime was included in the proposal and to provide an assessment of the impact of uncompensated overtime on the rates. As for conflicting information, the total price listed for option period 1 on its contract pricing proposal sheet differed from the total price listed for option period 1 on its cost summary; further, the protester's information on schedule Nos. 4 and 5, concerning distribution of contract labor years and labor hours, respectively, was inconsistent with the information the subcontractors provided. Given these omissions and conflicting information, the agency could not reasonably determine whether the protester's and its subcontractors' rates were reasonable and realistic.

As for the reasonableness and realism of the proposed annual escalation factor, the agency concluded, and the protester does not refute, that the protester failed to provide detailed information to support its stated escalation rates. The agency also discovered, and the protester does not refute, that some of its proposed subcontractors failed to furnish information concerning their proposed escalation rates. Absent such information, it was impossible for the agency to determine whether the costs associated with the escalation rates for labor costs were reasonable and realistic.

Under the reasonableness of subcontract proposals evaluation factor, the agency found that several subcontractors omitted essential cost information from their proposals. For example, several subcontractors either failed to include the schedule listing their indirect rates or failed to provide detailed information explaining their indirect rates. As for their proposed direct labor costs, many failed to include the administrative labor categories that would be used. Information concerning the adequacy of their small business subcontracting plans was also missing from several of the proposed subcontractors' proposals.

To rebut these findings, the protester simply states that the subcontractors eventually submitted the missing information. As discussed above, the fact that the information was submitted subsequently in a relatively short time frame does not establish that the omitted information was not needed to evaluate the proposals. Similarly, we are not persuaded by the protester's contention that the adequacy of its small business subcontracting plans should not have been evaluated because Federal Acquisition Regulation (FAR) § 19.704(a)(4) does not require subcontracting plans if the total amount of the subcontract to a large business is less than \$500,000. FAR § 19.704(a)(4) concerns the regulatory requirement for submission of subcontracting plans; it does not pertain to the instructions for proposal preparation included in a particular RFP. An offeror who fails to follow these instructions does so at its own risk and, to the extent that it does not include subcontracting plan information required by the RFP, it properly may be eliminated from the competitive range without benefit of discussions. See Systems & Processes Eng'g Corp., B-232100, Nov. 15, 1988, 88-2 CPD ¶ 478.

In order to evaluate the business/management portion of the cost proposals, the RFP required offerors to describe their purchasing systems, if they were approved by the Defense Contract Management Area Operation (DCMAO), or to provide a detailed description of their procurement systems and/or subcontracting methods and procedures, if their systems were not DCMAO-approved. Notwithstanding this explicit

requirement, the protester simply stated in its proposal that it did not have an approved purchasing system and that it understood "from FAR § 44.302 that this is not required unless business receipts are projected to be \$10 million or more for the fiscal year." As it did in the subcontracting plan area, the protester incorrectly assumed that regulatory requirements for the submission of information take precedence over explicit solicitation requirements.

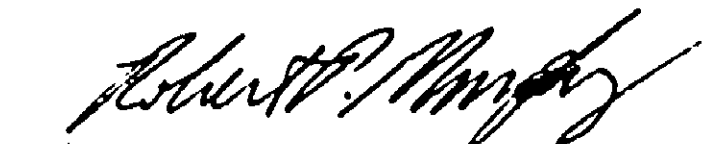
The evaluation team also concluded, and the protester does not rebut, that the protester's technical and cost proposals were inconsistent in terms of staffing. The RFP cautioned offerors to provide staffing and resumes which were representative of, and consistent with, their proposed labor costs as set out in the cost proposals. Notwithstanding this requirement, the number of employees that the protester proposed to comprise the staff for this contract in its technical proposal is significantly lower than the number listed in the protester's cost proposal. Since there was no relationship between the staffing profile and the proposed labor costs, the agency concluded that the protester would have to rewrite significant portions of its technical and cost proposals. Absent any indication in the record to show otherwise, we have no basis to question the reasonableness of the agency's determination, since the inconsistency in the proposal precluded a determination that the protester's proposed staffing level was technically sound and the costs associated with it were reasonable.

In sum, the informational deficiencies in the protester's cost proposal reasonably support the agency's conclusion that, short of a major revision, Faucett's proposal was unacceptable. The fact that the protester is the incumbent contractor and that the technical evaluation team initially determined, prior to being apprised of the inadequacies in the cost proposal, that Faucett's proposal was technically acceptable,³ do not detract from the reasonableness of the

³Initially, the SEB determined that there was an issue as to whether the low levels-of-effort proposed for many of Faucett's subcontractors--revealed during a preliminary review of the cost proposal by the cost evaluation team--affected the technical team's findings regarding the technical merit of Faucett's proposed. In response to that limited issue, the technical evaluation team concluded that the distribution of hours between Faucett and its subcontractors did not adversely affect the technical evaluation. Subsequent to that report by the technical evaluation team, the SEB became aware of the cost team's findings with regard to the other broad-ranging deficiencies in Faucett's cost proposal, which the SEB concluded "render[ed] the technical
(continued...)"

agency's decision to exclude the protester's proposal from the competitive range. No matter how capable an offer may be in a general sense, it cannot reasonably expect its proposal to be in the competitive range if it does not submit an adequately written proposal. Ensign-Bickford Co., supra.

The protest is denied.


James F. Hinchman
General Counsel

³(...continued)

proposal impossible to evaluate." It was in light of these deficiencies that the SEB recommended to the contracting officer that Faucett's proposal be eliminated from the competitive range.

Similarly, a statement by the cost evaluation team which the protester cites--that "there were no major issues that could not be addressed and corrected through the negotiation process"--was a general observation about all the proposals made early in the review process before the problems that ultimately formed the basis for the decision to exclude Faucett's proposal were identified.