



Comptroller General
of the United States

444153

Washington, D.C. 20548

Decision

Matter of: donald clark Associates

File: B-253387

Date: September 15, 1993

William A. Roberts, III, Esq., Lee Curtis, Esq., and Brian A. Darst, Esq., Howrey & Simon, for the protester, Susan L. Rives, Esq., Department of Energy, for the agency, Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency can consider information regarding actual performance under the incumbent contract in judging that firm's proposal for matters that are encompassed in evaluation criteria listed in the solicitation.

2. Procuring agency reasonably eliminated the protester's technically acceptable proposal from the competitive range that narrowed the remaining offerors to two firms, after giving consideration to cost, even though the protester's proposal had previously been included in the competitive range, where multiple weaknesses in the protester's best and final offer (BAFO), which was submitted after discussions, caused its BAFO to receive the lowest technical ranking of the seven competitive range proposals, such that it no longer had a reasonable chance of being selected for award.

3. Meaningful discussions have been conducted where the offeror is questioned about the three areas of its proposal that are considered to contain weaknesses.

DECISION

donald clark Associates (dca) protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. DE-RP08-92NV11101, a total small business set-aside, issued by the United States Department of Energy (DOE), for administrative support services.

We deny the protest.¹

¹Because award has not been made and dca was provided much of the evaluation documentation under protective order, the discussion is necessarily general.

This RFP was to acquire administrative support services including mail room operation, word processing, management directives, data entry, self service supply and records inventory. The RFP contemplated a cost-plus-fixed-fee contract for 1 year with four 1-year options.

Offerors were required to submit a business/management and a cost proposal. The RFP advised that the evaluation of the business/management proposal was more important than cost. The business/management proposal evaluation criteria were listed in descending order of importance as follows: (1) experience of the firm,² (2) key personnel, (3) staffing plan, (4) suitability of corporate management structure, (5) stability of labor management relationships, and (6) cost/schedule performance on other government contracts. The cost proposal was to be evaluated for reasonableness, appropriateness and probable cost to the government. The RFP advised that evaluated probable cost could become the determining factor for selection where two or more acceptable proposals were within the competitive range.

DOE received 22 proposals in response to the RFP, including a proposal from dcA--the incumbent contractor. The proposals were evaluated by a three member evaluation panel, which numerically rated offerors' business/management proposals on an 1,000-point scale.³ Cost proposals were also evaluated, although not assigned a numerical score. Based upon the initial evaluation, the panel established a competitive range composed of the seven highest technically rated proposals. dcA's proposal was the lowest rated of the proposals included in the competitive range.

Following discussions, DOE received best and final offers (BAFO), evaluated the BAFO responses and established a second competitive range composed of the two highest rated proposals. The remaining five offers were eliminated from the competitive range because the agency determined that these offers no longer had a reasonable chance of being

²This criterion states: "[e]xperience of the firm. Understanding of the requirements of the [s]tatement of [w]ork and the ability to perform the work described."

³Each criteria and subcriteria was numerically scored on a 10 point adjectival rating scale in which 10 was outstanding and 0 was unsatisfactory. The raw scores for each category were multiplied by a weighted factor reflecting the weight accorded to the particular criterion. The separate scores were then added to arrive at a total business/management score in which the maximum possible score was 1,000. For evaluation purposes, the three panel members' final scores were averaged to arrive at a final score.

selected for award. Although dca's point score improved from its initial proposal score, it was the lowest rated offeror of those who submitted BAFOs. Its point score was almost 50 points less than the sixth rated offeror and was more than 150 points lower than that of either offeror remaining in the competition.

dca argues that its BAFO was improperly eliminated from the second competitive range. dca claims that its proposal was unreasonably evaluated based on unstated evaluation criteria; that DCE failed to conduct meaningful discussions; and that DOE failed to consider cost in making its final competitive range determination.

Our examination of an agency's decision to exclude a proposal from the competitive range begins with the agency's evaluation of proposals. Labat-Anderson Inc., B-246071.4, Oct 9, 1992, 92-2 CPD ¶ 244. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the agency's evaluation to ensure that it was reasonable and in accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Id. The competitive range consists of all proposals that have a reasonable chance of being selected for award, generally including proposals that are technically acceptable or reasonably susceptible of being made acceptable through discussions. Intown Properties, Inc., B-250392, Jan. 28, 1993, 93-1 CPD ¶ 73. However, a technically acceptable proposal may be eliminated from the competitive range if, based upon the array of technical ratings actually obtained by the offerors and consideration of the proposed costs, the proposal does not stand a reasonable chance of being selected for the award. Id. If the agency's evaluation of proposals is reasonable, and not violative of any law or regulation, there is nothing improper in an agency's making more than one competitive range determination and dropping a firm from further consideration. Labat-Anderson Inc., supra.

The record of the evaluation reveals that although dca's business/management proposal received above average ratings under a majority of the RFP's evaluation criteria, it received the lowest BAFO rating. The evaluation documentation shows that dca received its lowest relative ratings (albeit still at least satisfactory ratings) for the key personnel, labor management relations and staffing plan criteria.

Among the weaknesses noted by DOE in dca's proposal was the proposed project manager, who held that position on dca's present contract for these services. The evaluators found this individual did not have long term experience in directives management--one of the newer functions under this

contract--and the proposal did not indicate that the proposed project manager had any amount of higher education which would overcome this limited experience. The evaluators also mentioned a variety of incidents that occurred under dcA's contract evidencing the project manager's failure to consistently exercise his authority in managing the project.

The weakness in labor management relations stemmed from the proposal's failure to explain how dcA would overcome a problem in this area that had been experienced during the performance of dcA's current contract. In this regard, the evaluators reported several situations which reflected less than superior labor management relations, including that several employees were disgruntled because dcA refused to timely grant cost of living wage increases.

Under the staffing plan criterion, DOE was concerned that, among other things, dcA did not adequately address cross-training. While dcA cited some examples of "cross-training" in its proposal, DOE downgraded dcA's approach to cross-training because it knew of only one employee who actually reflected the kind of cross-training contemplated under the contract.⁴

The evaluators also found that dcA did not adequately demonstrate its capability in records management, either through its abbreviated performance of this function under the prior contract or through other contract experience, and that dcA did not adequately demonstrate its understanding that the directives management function should be a distinct operating unit--the proposal did not identify directive management support personnel as such; instead these positions were identified as word processors.

dcA challenges the legitimacy and materiality of virtually all the weaknesses identified in its proposal. For example, dcA claims that, contrary to DOE's evaluation, it expressly stated in the proposal that it possessed records management experience and listed several contracts reflecting this kind of experience. Further, dcA states that though its proposal contained a cost/data sheet which categorized directive management personnel as word processors, other information in the proposal reflected its understanding of the

⁴DOE found that all the individuals listed as examples of those who had been cross-trained, except one, had been trained for new or upward job positions. It found that none of the examples reflected an individual temporarily loaned outside of the normal duty station for cross-training at another job, with the express purpose to backfill temporary shortages in another support service function.

distinction between the two functions. While dCA questions these evaluations, it also admits, and the record confirms, that its proposal contained misleading or ambiguous information regarding its experience in records management⁵ and in distinguishing between the records management and word processing functions.⁶ It is the offeror who must bear the burden for failing to submit an adequately written proposal and proposal revisions, and we think that the agency reasonably found dCA was weak in these areas. See Labat-Anderson Inc., supra.

A major thrust of dCA's argument is that DOE unreasonably considered DOE's actual experience with dCA as the incumbent contractor in evaluating dCA's proposal, which resulted in an unreasonable and improper application of unstated evaluation criteria. An agency can consider its actual experience with an offeror where that experience is encompassed in specified evaluation factors. See Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133; Sabreliner Corp., B-242023; E-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326. Just as incumbent contractors with good performance records can offer real advantages to the government that can be considered consistent with the evaluation criteria, incumbent contractors with less favorable performance records may not offer such advantages; we see nothing improper in an agency's taking such information into account where it is reasonably encompassed by the evaluation criteria and provides the agency with a better understanding of the proposal. Id.

Here, the evaluators' particular consideration of dCA's performance in judging its proposal was appropriately encompassed under the experience, suitability of corporate management structure, key personnel, labor relations and

⁵For example, despite dCA's express statement that it possessed records management experience, the record indicates that the contracts to which dCA cited as examples of its records management experience actually referred to this experience as filing experience.

⁶Although dCA's proposal did include information that suggested that it realized that directive management was a distinct operating unit, the cost/data sheet first included in dCA's BAFO, which referred to the records management personnel as word processors, raised a legitimate concern about dCA's real understanding of this distinction. In this regard, we note that the RFP expressly advised offerors that if they were unable to find the exact job title on the Department of Labor determination, they were required to indicate the job title they were using as an equal for that position.

staffing criteria. For example, since the key personnel criterion was said to assess the "[q]ualifications of the proposed personnel as demonstrated by education, technical, and professional experience relevant to the required work," the evaluators' knowledge of the project manager's "performance" under the incumbent contract was directly related to his "demonstrated" qualifications for the position. Also, since the stability of labor management relations criterion required the offeror to address current and recent labor relations, the evaluators could properly consider the agency's highly relevant experience with dCA's current labor relations. While dCA offers mitigating explanations for the evaluator's performance observations and claims that its performance under the incumbent contract was regarded as excellent, it has not shown that the performance information which DOE considered in downgrading its proposal was inaccurate.

dCA further argues that a key reason its BAFO was eliminated from the competition was DOE's failure to conduct meaningful discussions. In order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals unless doing so would result in disclosure of one offerors' technical approach to another offeror or in technical leveling. Labat-Anderson Inc., supra. Agencies are not obligated to afford all-encompassing discussions or discuss every element of a technically acceptable, competitive range proposal that has received less than the maximum possible score. Agencies are only required to lead offerors into the areas of their proposals considered deficient. Sierra Tech. and Resources, Inc., B-243777.3, May 19, 1992, 92-1 CPD ¶ 450.

Here, the record shows that the discussion questions addressed to dCA focused on the three major areas of weakness in its proposal--the project manager's experience, the staffing plan, in particular the proposed cross-training program, and labor relations. Under the circumstances, we think that DOE sufficiently led dCA into the areas of concern about its proposal. For example, dCA was asked to elaborate on the experience and ability of the project manager, the effectiveness of the cross-training program, the firm's ability to maintain employee morale and its policy for giving annual raises. While dCA complains that the discussion questions did not reference dCA's incumbent contract performance, the record does not suggest dCA was prejudiced in that the observations were basically accurate and relevant to the criteria.'

⁷The focus of dCA's actual protest of the adequacy of discussions is that DOE never informed dCA about its lack of
(continued...)

dcA finally argues that DOE failed to adequately consider cost or probable cost before eliminating its proposal from the competitive range. The record establishes, however, that DOE evaluated each competitive range offeror's cost proposal, including dcA's, in accordance with the RFP criteria before establishing the second competitive range. In this regard, dcA's proposed costs, which were found reasonable, were higher than all seven original competitive range offerors save one and higher than either offeror included in the final competitive range. While dcA complains about certain probable cost evaluations made to the remaining offerors' proposed costs shortly after the final competitive range determination, the record shows that this would have had no effect on the competitive range determination, at least as concerns dcA, given the two competitive range offerors' significantly higher business/management ratings.


In sum, we find that DOE reasonably eliminated dcA's technically acceptable proposal from the competitive range after giving consideration to cost, because of dcA's low relative ranking, particularly in the areas of key personnel, staffing plan and labor relations, as compared to the two much higher rated offerors' proposals included in the final competitive range and the four intervening offerors whose

⁷ (...continued)

records management experience, that its proposal did not identify the directives management function as a distinct operating unit, and that its proposal lacked examples of dcA's efforts to assist excess personnel find employment elsewhere. Our examination of the evaluation of BAFO's indicates that though DOE listed records management as a weakness, the panel members did not consider this to be a deficiency in dcA's proposal; indeed, the individual evaluator's scores that dcA received in this area were 9, 9 and 8. Similarly, under the ability to absorb excess personnel, dcA's proposal was not rated deficient in this area, under which the panel members assigned scores of 8, 7, and 9. Further, the record indicates that the question concerning whether dcA understood the distinction between records management was first introduced by dcA in its BAFO and the agency was therefore not required to reopen discussions to ascertain dcA's real intent. See Labat-Anderson Inc., supra. Also, although after obtaining a copy of the discussions with the competitive range offerors under the protective order issued under this protest, dcA argued that DOE conducted unequal discussions, there is no evidence in the record to support this contention since the other offerors received similar discussions as did dcA.

proposals were also eliminated from the competitive range.
See The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2
CPD ¶ 271.

The protest is denied.


for James F. Hinchman
General Counsel