



Comptroller General
of the United States

1126298

Washington, D.C. 20548

Decision

Matter of: Pyramid Services, Inc.; Omni Corporation
File: B-257085; B-257085.2
Date: August 23, 1994

Ronald E. Burch for Pyramid Services, Inc., and W. D. Marsh, for Omni Corporation, the protesters.
Newton L. Klements, Esq., and Beth Kelly, Esq., Department of the Army, for the agency.
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably excluded protester's proposal from the competitive range where the record shows that, due to the nature of the principal weaknesses in the proposal--i.e., failure to propose sufficient staffing, contractor's reliance on significant number of substantially older, used vehicles for contract performance, firm's lack of direct prime contractor experience, as well as failure to propose contingency plan for labor strike or work slowdown situations--it could not have been improved enough through discussions to make it competitive with other technically superior, comparably-priced proposals.
2. Agency reasonably excluded protester's proposal from the competitive range where: (1) protester failed to provide required resumes for key superintendent personnel as well as required vehicle lease agreements; and (2) protester failed to propose sufficient staffing and otherwise lacked direct experience with similar projects.

DECISION

Pyramid Services, Inc. and Omni Corporation protest the exclusion of their proposals from the competitive range under request for proposals (RFP) No. DACW38-94-R-0003, issued by the Department of the Army for the operation, maintenance and repair of government-managed facilities and grounds at Lakes Ouachita, Greeson, and DeGray located in Arkansas. Pyramid and Omni each contend that the Army

misvaluated its proposal and improperly excluded it from the competitive range without conducting discussions.

We deny the protests.

BACKGROUND

The solicitation was issued as a total small business set-aside on October 28, 1993, and contemplated the award of a cost-plus-award fee contract for a base year and 4 option years.

Under the RFP, offerors were to provide a variety of maintenance and repair activities at three large lake sites; as specified in the RFP, the required services included such tasks as: building and plumbing repairs; fisheries and wildlife habitat maintenance; flood control and high water surveillance; and recreation area/facility cleaning and trash removal.

The solicitation required offerors to submit both a technical and price proposal. In this regard, the RFP provided that technical proposals would be evaluated for "Technical Capability" and "Management Capability," with "management capability [having] the greatest weight in the evaluation." Cost proposals were to be evaluated for "reasonableness." With respect to contract award, the RFP stated that "[a]ward will be made to the offeror whom the [g]overnment determines able to accomplish the necessary work in a manner most advantageous to the [g]overnment."

On November 19, the agency conducted a pre-proposal conference for all contractors which both protesters attended; on January 20, 1994, the agency issued a solicitation amendment which set forth and responded to numerous contractor questions presented at the conference.

Proposals were required to be submitted by February 22.¹ From February 24 until April 8, a technical evaluation team graded the offerors' technical proposals. On April 13, after reviewing the technical team's findings and the proposals of each offeror, the contracting officer determined that only three proposals should be included in the competitive range since these offers were substantially superior in technical merit and comparable in cost to the

¹Because the competition for this requirement is still proceeding, the agency has asked this Office not to release certain source selection sensitive information, such as how many proposals were received and what the technical scores and evaluated costs for each offeror were. Consequently, our discussion of these areas is necessarily general.

other proposals. Shortly after receiving notification of the exclusion of their proposals from the competitive range, Pyramid and Omni filed these protests.

ANALYSIS

Introduction

The solicitation provided that technical proposals would be evaluated under the following evaluation factors/subfactors (stated in greater detail in the RFP, but paraphrased here):

1. Technical Capability:
(3 factors; equal importance)
 - a. Proposed on-site staffing
 - b. Proposed equipment
 - c. Proposed budgetary and cost accounting systems.
2. Management Capability:
(4 factors; listed in descending order of importance)
 - a. Staff supervisory and management experience with the type of maintenance and repair work described in the solicitation.
 - b. Company experience performing the type of maintenance and repair work described in the solicitation.
 - c. Adequacy and reasonableness of management plans.
 - d. Adequacy and reasonableness of management policies and procedures.

Pyramid and Omni contend that the agency's decision to exclude their proposals from the competitive range was improper because their submitted proposals were technically acceptable. Alternatively, each protester asserts that before excluding its proposal from the competitive range, the agency should have conducted discussions to permit it to correct any significant weaknesses.

The evaluation of proposals and resulting determination of whether a particular offer is in the competitive range are matters within the discretion of the contracting agency, since it is responsible for defining its needs and the best

method of accomplishing them. Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228. In reviewing challenges to an agency's competitive range determination, our Office does not independently reevaluate proposals; rather, we examine the evaluation to determine whether it was reasonable and in accordance with the RFP criteria. Id.; Building Servs. Unlimited, Inc., B-252791.2, Aug. 25, 1993, 93-2 CPD ¶ 133. In this regard, a protester's disagreement with the agency's technical judgment, without more, does not show that the agency's judgment was unreasonable. ESCO, 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

From our review of the record, including each protester's technical proposal and the parties' arguments, we see no basis to question the agency's decision to exclude the Pyramid and Omni proposals from the competitive range without discussions.

Evaluation of Pyramid's Technical Proposal

The technical evaluation team found Pyramid's proposal to be deficient in the following areas. With respect to the technical capability factor, the team determined that Pyramid's proposal was deficient under the on-site staffing plan and equipment subfactors; regarding the management capability factor, the team downgraded Pyramid's proposal under the staff experience, company experience, and management plan subfactors.

Pyramid's Technical Capability

The RFP requested resumes for each of the offeror's proposed personnel, and, in particular, specified as mandatory the submission of a resume for each supervisory staff member. In this regard, the RFP required offerors to propose three project superintendents--one superintendent per lake--and further required that each proposed superintendent have "a minimum of 5 years experience as a supervisor of these types of activities."

Notwithstanding these instructions, the resumes submitted for two of Pyramid's three proposed project superintendents failed to reflect the required experience. With respect to Pyramid's proposed Lake Greeson superintendent, the resume for that individual failed to mention any supervisory experience relevant to the services required here; rather, the only possible supervisory role set forth in the resume referred to this individual's experience in teaching vocational studies at various high schools located in Arkansas. Similarly, the resume submitted for the Lake DeGray project superintendent failed to mention any supervisory experience other than a general reference to

work as a "restroom and mowing crew" project manager--which clearly did not pertain to the broader lake site supervisory experience required by the RFP. Based on these resume deficiencies, the technical evaluation team significantly downgraded Pyramid's proposal under the on-site staffing subfactor.

The team also significantly downgraded Pyramid's proposal under the equipment subfactor since a substantial number of the firm's proposed vehicles were used or reconditioned, and Pyramid's proposal indicated that these items had extremely high mileages. The RFP required offerors to propose a variety of trucks, trailers, tractors, and related maintenance equipment for the performance of this contract. Ten of the trucks proposed by Pyramid were classified by the firm as "used"; were between 5 and 9 years old; and held mileages that were either "unusually low--i.e., a 1985 flatbed truck with only 4,787 miles--or very high--i.e., a 1989 truck with 69,730 miles. Six of the tractors proposed by Pyramid were "used" with high usage hours and ages ranging from 14 to 32 years. In its proposal, Pyramid indicated that the proposed used vehicles "ha[d] been reconditioned and [are] in excellent condition" but provided no other details about the condition of the proposed vehicles. When the technical team tried to contact the identified leasing source for the used vehicles at the telephone number provided by Pyramid in its proposal, the team located only private individuals--not the leasing firm that Pyramid had identified; further research by the team into the relevant telephone listings and Dun & Bradstreet business reports also failed to uncover the leasing firm, as identified by Pyramid. Since the contract required use of the proposed vehicles for up to 5 years, in light of the age, mileages, and unconfirmed quality of these proposed items, the technical evaluation team awarded Pyramid a low point score for the proposed equipment subfactor.

Pyramid's Management Capability

With respect to the management capability portion of the technical evaluation, the technical evaluation team slightly downgraded Pyramid's proposal under the staff supervisory management experience subfactor since Pyramid proposed using its Lake Ouachita project manager to simultaneously perform overall supervision of all three lake projects. Based on the description provided in Pyramid's proposal of the overall administrative supervision task, the evaluation team determined that performing in the capacity proposed would render the individual unavailable for full-time supervision of Lake Ouachita. Consequently, the team downgraded Pyramid's proposal under this subfactor.

The team also downgraded Pyramid's proposal under the prime contractor experience subfactor since the firm lacked experience in maintaining the type of lake facility projects specified here. The lakes requiring maintenance under this RFP are flood control projects which--in addition to requiring standard facility and grounds services--also require specialized maintenance and occasional emergency flood operations.² Since Pyramid--by its own admission--lacks the prime contractor experience with this type of effort, the technical evaluation team--although giving Pyramid considerable points for "technically equivalent" experience--did not award Pyramid the full point score under this particular subfactor.

Under the management capability factor, the greatest deficiency found in Pyramid's proposal was with respect to the adequacy of its proposed management plan. Paragraph L.25.9 of the RFP required offerors to provide a detailed management plan which was to include "contingency plans in the event of a labor strike or work slow-down." Notwithstanding these instructions, Pyramid failed to provide this item under its submitted management plan; instead, Pyramid explained in its proposal that "a strike plan would be prepared immediately, if needed." As a result of the contingency plan omission, the technical evaluation team substantially downgraded Pyramid under the management plan adequacy subfactor.

Reasonableness of Pyramid Proposal Evaluation

Reflecting these findings, Pyramid's technical score was substantially lower than the lowest-ranked proposal included in the competitive range. Although Pyramid argues that the evaluation was unreasonable, we think the record supports the technical evaluations team's conclusions and shows that the team adhered to the RFP's stated evaluation criteria.

Given the clear solicitation instructions for superintendent resumes and a labor contingency plan, it was Pyramid's responsibility to prepare an adequately written proposal which could be evaluated in accordance with the criteria set forth in the solicitation. By not submitting resumes showing the required supervisory experience and failing to propose the required labor contingency plan, Pyramid ran the risk of being rejected from further consideration. See Peter M. Coons, Inc., B-255553, Mar. 10, 1994, 94-1 CPD ¶ 191; Xeta Int'l Corp., B-255182, Feb. 15, 1994, 94-1 CPD ¶ 109.

²As described in the RFP, emergency flood operations include such tasks as dam observation, operation of portable pumps, and placement of erosion control materials.

Insofar as Pyramid contends that the equipment evaluation was improper, we note that other than expressing disagreement with the agency's conclusions, Pyramid has not shown how the agency's concerns regarding the age and mileage of the firm's proposed used vehicles were unreasonable. While the protester asserts that the agency should have inspected these items before downgrading this portion of its technical proposal, we think that given Pyramid's failure to provide an appropriate contact for the leasing source of this equipment, and the failure to adequately explain in its proposal the "reconditioned" status of these items, the agency's technical conclusions were reasonable.³ In short, a lower point score for older equipment is not, based on this record, an unreasonable evaluation determination for the equipment subfactor.

Finally, to the extent Pyramid challenges the agency's technical conclusions regarding its staff and company experience, we think that the scores awarded by the team for these subfactors reasonably reflect Pyramid's qualifications. The crux of Pyramid's disagreement with these evaluation findings is in the protester's assertion that it was not given sufficient credit for "technically equivalent" staffing and company experience; however, our review of the evaluation documents shows that Pyramid's score under these management capability subfactors merely reflects the fact that, absent exact experience with the type of lake project services required here, Pyramid could not receive a perfect score for these areas of its proposal.

Pyramid argues that notwithstanding the evaluation findings, its offer should not have been excluded from the competitive range without discussions. Pyramid contends that if discussions had been held, each of the areas in which its proposal was downgraded could have been addressed.

The competitive range is determined by comparing all of the acceptable proposals and proposals reasonably capable of being made acceptable in a particular procurement. 52 Comp. Gen. 718 (1973). Consequently, an acceptable proposal--or a deficient proposal capable of being corrected through

³In addition, the solicitation clearly advised offerors that proposed equipment would not be inspected unless the offeror's proposal was included in the competitive range; Paragraph M.2, "Inspection of Offeror's Equipment" expressly stated:

"If an offer submitted in response to this solicitation is favorably considered, a survey team may contact the offeror and arrange for the inspection of equipment proposed by the offeror."

discussions--may nonetheless be eliminated by comparing the relative ranking of the other proposals to the proposal in question. See Radio Sys., Inc., B-255080, Jan. 10, 1994, 94-1 CPD ¶ 9; Jack Faucett Assocs., B-224414, Sept. 16, 1986, 86-2 CPD ¶ 310. Thus, a marginally adequate proposal--such as Pyramid's--need not be included in the competitive range simply because it is technically acceptable or capable of being made acceptable when it is determined that it has no reasonable chance for award, based on cost or technical factors. Id.

Here, the record shows that compared to the three proposals included in the competitive range, Pyramid's proposal was comparably priced but considerably lower in technical merit. Given the nature of the principal weaknesses of Pyramid's proposal and the technical superiority of the top three ranked offers, we think that the agency properly concluded that Pyramid had no reasonable chance of contract award. For example, as explained above, Pyramid lacks prime contractor experience in maintaining the type of lake facility projects involved here; there was no basis for the agency to assume that Pyramid would significantly improve its rating in this area even if discussions had been held with the firm. Similarly, we see no reason for the agency to have assumed that Pyramid would make the major substitutions that would be needed to address the agency's concerns about the age and mileage of its proposed equipment and to change the agency's rating of its proposal in that area. Thus, the exclusion of Pyramid's proposal from the competitive range is not objectionable. See Curry Contracting Co., Inc., B-254355, Dec. 13, 1993, 93-2 CPD ¶ 334.

Evaluation of Omni's Technical Proposal

The record shows that Omni's proposal was excluded from the competitive range based on the following deficiencies which collectively rendered its proposal technically unacceptable. First, with respect to the technical capability portion of its proposal, Omni was substantially downgraded under the on-site staffing subfactor since it failed to provide a resume for its proposed Lake Ouachita superintendent candidate. Omni's proposal was also downgraded under the equipment subfactor since the firm failed to provide the required vehicle leasing agreements and did not otherwise comply with several of the equipment specifications. Finally, under the budgetary/cost accounting subfactor, Omni also received a slight deduction of technical points since the firm failed to provide several of the requested data formats and reports necessary to evaluate this area of its technical proposal.

With regard to the management capability factor, the technical evaluation team downgraded Omni's proposal as a result of Omni's failure to propose the minimum number of staff required by the RFP and because Omni lacked prime contractor experience with management of this type of lake facility project work.

Omni's Technical Capability

As noted above, offerors were required to submit resumes for each of the three proposed project superintendents. Omni failed to submit a resume for its proposed Lake Ouachita superintendent. In this regard, although resumes for the other positions were not mandatory under the terms of the RFP, without any additional information--and particularly in light of its failure to provide a resume for its Lake Ouachita superintendent--the technical evaluation team had no basis from which to judge Omni's ability to manage the Lake Ouachita site.⁴

Additionally, Omni failed to propose the minimum staffing required for each site, as set forth in section J of the RFP. For example, while four light-duty truck drivers were required at the Lake Ouachita site for the months of November, December, January and February, Omni proposed only one driver for each of these months. Omni similarly failed to propose sufficient staff for the other sites. Consequently, as a result of its resume and staffing deficiencies, Omni's proposal was substantially downgraded under the on-site staffing subfactor.

Omni also received a low technical score under the proposed equipment subfactor. First, contrary to the express terms of the RFP--which set forth minimum equipment requirements at each project site--Omni failed to indicate whether it would meet these criteria. For example, although the solicitation required washers at all lake sites, Omni indicated only that it would locate four washers at the Lake Ouachita site. Additionally, while the RFP required offerors to provide large trash compactors for each lake site, Omni instead proposed supplying covered dumpsters. Finally, Omni failed to furnish any of its vehicle/equipment leasing agreements as required by the RFP; instead, Omni merely indicated in its proposal that its proposed new vehicles "will be obtained from dealers." As a result, Omni's proposal was rated technically unacceptable under the equipment subfactor.

⁴The RFP had warned offerors that "large-scale" failure to provide "employee resume information, will not be looked upon favorably by the evaluation team."

The technical evaluation team also deducted several points from Omni's technical capability score due to deficiencies in its budgetary/cost accounting data. Specifically, while paragraph L.25.8 advised offerors to ". . . provide examples of data formats and reports generated from this system which illustrate your capability to meet the requirements of this solicitation," Omni did not include any of this information in its technical proposal, and was downgraded accordingly.

Omni's Management Capability

Because of the resume deficiencies noted above, Omni was similarly downgraded under the staff experience subfactor of the management capability factor. Essentially, because of these deficiencies, the technical evaluation team concluded that Omni did not have sufficient staff experience to support this contract.

Omni's proposal was also downgraded under the prime contractor experience subfactor. Although the team awarded Omni substantial points as a result of the firm's demonstrated company experience with grounds maintenance, cleaning and janitorial services, real property maintenance and minor construction work contracts, because the firm held no direct experience in managing large lake flood project sites like those here, several points were deducted from the firm's score under this subfactor.

Reasonableness of Omni Proposal Evaluation

As a result of the above-referenced deficiencies, the technical evaluation team essentially found Omni's submitted proposal technically unacceptable; Omni's technical score was substantially below the lowest-ranked proposal included in the competitive range.

Contrary to Omni's contentions, our review shows that the evaluation of Omni's proposal was reasonable. As noted above, Omni failed to adhere to many of the proposal preparation instructions--omitting required details such as resumes, equipment leasing agreements, and pricing data. By ignoring the RFP's specific instructions to provide these items, the protester assumed the risk that, as occurred here, the technical evaluation team would not find sufficient detail in its proposal to adequately evaluate the protester's experience and capability, as relevant to the required services. See A. G. Crook Co., B-255230, Feb. 16, 1994, 94-1 CPD ¶ 118. Under these circumstances, we think the technical evaluation team reasonably concluded that Omni's proposal failed to establish that the firm was

capable of performing this requirement. Id.; Paragon Imaging, Inc., B-249632, Nov. 18, 1992, 92-2 CPD ¶ 356.

Where an offeror's proposal is found technically unacceptable it may properly be excluded from the competitive range. See G.O. Parking, Inc., B-250466, Jan. 5, 1993, 93-1 CPD ¶ 11. Moreover, there is no obligation to conduct discussions with an offeror whose proposal has been properly excluded from the competitive range. See Tri-Servs., Inc., B-253608, Sept. 7, 1993, 93-2 CPD ¶ 131. In this case, because the agency reasonably determined that Omni's proposal was technically unacceptable, the subsequent elimination of Omni's proposal from the competitive range without conducting discussions was unobjectionable. See A. G. Crook, supra; Intown Properties, Inc., B-249036.3, Jan. 15, 1993, 93-1 CPD ¶ 45.

The protests are denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel