



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Baker Support Services, Inc.

**File:** B-257054.2

**Date:** January 20, 1995

Stephen G. Southarland for the protester  
William A. Roberts, III, Esq., Lee P. Curtis, Esq., and  
Brian A. Darst, Esq., Howrey & Simon, for J. A. Jones  
Management Services, Inc., an interested party.  
Georgia Vlahos, Esq., Diane D. Hayden, Esq., and Paul M.  
Fisher, Esq., for the Department of the Navy.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Protest that agency improperly evaluated protester's proposal is denied where the record shows that the agency evaluated the protester's proposal in accordance with the evaluation criteria set forth in the solicitation and supports the reasonableness of the agency's overall technical rating of the protester's proposal as "marginal."
2. Where solicitation announced that the Department of the Navy intended to evaluate proposals and make award on the basis of initial proposals without conducting discussions, and agency's evaluation of the protester's proposal as "marginal" overall was reasonable and in accordance with the solicitation's evaluation criteria, the agency was not required to conduct discussions with the protester and properly made award to a technically superior, higher-priced offeror on the basis of initial proposals.

### DECISION

Baker Support Services, Inc. protests the award of a contract to J. A. Jones Management Services, Inc. under request for proposals (RFP) No. N62467-93-R-7926, issued by the Department of the Navy for base operation services at the Naval Ordnance Station, Louisville, Kentucky. Baker contends that the agency improperly evaluated its proposal. The protester also argues that award to Jones without conducting discussions was improper.

We deny the protest.

## BACKGROUND

The RFP contemplated the award of a combination firm, fixed-price, indefinite quantity contract for a base year with up to four 1-year option periods. The RFP sought proposals to provide all labor, supervision, engineering services, tools, materials, equipment and transportation necessary to operate, maintain and repair the facilities, equipment, supplies, and systems described in the RFP. Offerors were required to submit separate technical and price proposals.

The RFP divided the contractor's responsibilities into 15 functional areas called "annexes." For each annex, the RFP instructed offerors to complete an "OFFEROR'S EXPERIENCE FORM" and a "PROPOSAL FORM," included as attachments to the solicitation. By completing these forms, offerors were to illustrate their experience in providing the services related to each annex, or discuss other appropriate services in government or comparable civilian projects similar in scope, size, and complexity.

The "PROPOSAL FORM" required offerors to address questions or specific issues pertaining to each annex. Specifically, as relevant to this protest, the RFP instructed offerors "to respond to the issue succinctly demonstrating an understanding of the work of the annex." The RFP further stated in bold lettering that "[t]he rationale for the stated FTEs [full-time equivalent employees] and material planned must be clearly presented for each annex." Offerors were also required to submit an organizational chart illustrating the resources that would be dedicated to the contract.

For each contract period, section B of the RFP required offerors to submit a total price for the fixed-price portion of the work, contract line item number (CLIN) 0001; a total price for the indefinite quantity portions of the contract, CLINs 0002 through 0005; and a grand total price, CLINs 0001 through 0005. In order to facilitate the agency's evaluation of the fixed-price portion of proposals, offerors were required to provide supplemental pricing information by completing charts included in section B of the RFP which listed each of the 15 annexes separately. For each annex

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<sup>1</sup>For example: annex 1, administrative requirements; annex 2, transportation; annex 3, maintenance and repair of railroad trackage; annex 4, maintenance and repair of cranes; annex 5, maintenance and repair of grounds and surfaced areas, etc. The technical exhibits for each annex provided estimated work loads, projected requirements, and/or historical data.

offerors were required to submit direct labor and material costs, and indicate proposed numbers of direct labor FTE employees identified as separate sub-line items for each annex, and total costs for each annex. Price proposals were to clearly support the resources proposed in the technical proposal. Offerors were required to provide their rationale for each of the fixed-price and indefinite quantity CLINs for each annex.

Section M of the RFP identified technical and price as the two evaluation factors, each being of equal importance. Under the technical factor, the RFP listed the following evaluation subfactors, each of equal importance: (a) experience; (b) understanding and methods; and (c) resources. Award was to be made to the responsible offeror whose offer conforming to the solicitation was considered most advantageous to the government.

The agency received five proposals by the time set on June 10, 1994 for receipt of initial proposals. A technical evaluation board (TEB) rated technical proposals by assigning adjectival ratings--Highly Satisfactory (HS), Acceptable (A), Marginal (M), or Unacceptable (U)--under each technical evaluation subfactor listed in the RFP, and assigning an overall rating as shown below. The results of the evaluation were:

<u>Offeror</u>	<u>Price</u>	<u>Subfactor Rating</u> <u>(a)/(b)/(c)</u>	<u>Overall</u> <u>Rating</u>
Baker	\$14,258,007	HS/M/A	Marginal
B	14,285,740	A/M/M	Marginal
Jones	15,901,584	HS/A/HS	Acceptable
C	16,677,383	M/U/M	Unacceptable
D	24,448,526	A/A/A	Acceptable

A price evaluation board (PEB) separately evaluated price proposals. Of the five proposals reviewed, the PEB concluded that only the proposal submitted by Jones was acceptable from a price perspective. The PEB had significant concerns with the other four proposals, including the protester's, and concluded that Baker's proposal was "seriously impractical."

Based on the results of the technical and price evaluations, the source selection board (SSB) considered Baker's proposal "seriously impractical," particularly with respect to the protester's proposed FTEs. The SSB concurred with the TEB's overall rating of the protester's proposal as marginal, and recommended to the source selection authority (SSA) that Baker's proposal not be considered further. The SSB further concurred with the TEB's rating of Jones's proposal as acceptable, and recommended that award be made to that firm without conducting discussions. The SSA concurred with that

recommendation, and on September 2, the agency awarded the contract to Jones. Baker subsequently filed an agency-level protest which the Navy denied. Baker then filed this protest in our Office.

#### PROTESTER'S CONTENTIONS

Baker argues that the TEB improperly evaluated its proposal. Baker maintains that the TEB's concerns over its proposed FTEs were unwarranted because the problem was the result of a minor clerical error in its proposal. The protester also contends that the agency evaluators overlooked a section in its proposal in which Baker explained its overall rationale for arriving at its proposed staffing levels which should have overcome the TEB's concerns regarding its FTE levels. The protester also argues that the agency improperly awarded the contract to Jones on the basis of initial proposals without conducting discussions.

#### DISCUSSION

##### Proposal Evaluation

The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Id. Here, we find that the record supports the reasonableness of the agency's evaluation of Baker's proposal.

The TEB found that Baker's proposal did not clearly establish an organizational structure responsive to the work in each annex, and that the staffing levels as reflected in its proposed FTEs were "ambitious." In this connection, the agency considered Baker's proposed FTEs for nonmanagement personnel to be overall "grossly underestimated" when compared with the government's estimates for those positions, leading the evaluators to conclude that Baker either misunderstood the requirement or had proposed insufficient staffing.

The TEB also was concerned that the number of total hours Baker proposed in its technical proposal did not coincide with the FTEs Baker listed in section B of its proposal. The TEB concluded that based on its review of the protester's proposed staffing levels, it appeared that Baker "was reverting back to the requirements envisioned in [its] previous contract," rather than proposing staff on the basis of the current requirement. Further, of significant concern to the TEB was that Baker did not provide in its proposal a

narrative explanation of its rationale for its proposed FTEs for each of the 15 annexes, lending further support to the evaluators' conclusion that Baker did not understand the RFP's requirements.

In view of the RFP's clear requirement for offerors to provide a rationale explaining their proposed FTEs, and given Baker's lack of explanation for what the evaluators considered "grossly underestimated" staffing levels, the TEB reasonably downgraded the protester's proposal under technical evaluation subfactor (b), "understanding and methods," awarding the firm's proposal a rating of "marginal" under this area.

The protester concedes that for two annexes (9a and 9b), its proposed FTE hours "did not coincide" with the hours listed in section B of its proposal. The protester explains, however, that this was a clerical error that the agency evaluators should have discovered and allowed Baker to correct. With respect to a lack of a narrative explanation for the proposed FTEs for each annex, Baker explains that rather than providing a rationale for each of the 15 annexes, as required by the RFP, it provided a brief explanation covering its overall FTE rationale which, since it is an experienced contractor providing these services, should have been sufficient to overcome the evaluators' concerns regarding its proposed staffing.

The protester's argument that the agency should have realized that Baker had made a mistake in its proposal regarding annexes 9a and 9b, and that the evaluators should have considered its overall FTE rationale sufficient to overcome its concerns, is without merit. It is incumbent on an offeror to submit an adequately written proposal for the agency to evaluate. See A Plus Servs. Unlimited, B-255198.2, Jan. 31, 1994, 94-1 CPD ¶ 52. No matter how competent a contractor may be, the agency may elect to base an offeror's technical evaluation entirely on the information in or submitted with the proposal. See SeaSpace Corp., B-252476.2, June 14, 1993, 93-1 CPD ¶ 462. The RFP clearly required offerors to provide direct FTEs and direct labor costs for each annex, as separate sub-line items, to allow the agency to evaluate whether the offeror proposed sufficient staffing and resources. Since Baker admits that it did not comply with these clear instructions with respect to annex number 9, there is no basis to object to the TEB's evaluation of Baker's proposal as to the "understanding and methods" subfactor.

The RFP further required that "[t]he rationale for the stated FTEs and material planned must be clearly presented for each annex." Rather than providing a narrative explaining how it arrived at its proposed FTE levels for

each annex, Baker opted to provide a fairly brief paragraph allegedly setting forth its overall staffing rationale. Since the RFP placed the burden on Baker to submit an initial proposal that adequately demonstrated the firm's understanding of the requirements, including an explanation for the FTE levels proposed for each annex, the protester ran the risk of having its proposal downgraded by failing to do so. See DRT Assocs., Inc., B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47.

The protester argues that given the "highly satisfactory" rating its proposal earned under the experience evaluation subfactor, and given the "acceptable" rating under the resources subfactor, its proposal does not warrant an overall rating of "marginal." We disagree.

The evaluation documents show that both the TEB and PEB considered the lack of FTE rationale in Baker's proposal to be a fundamental flaw which affected all 15 annexes, from both a technical and a price perspective, and which rendered its proposal essentially unacceptable. From a technical perspective, the TEB found that Baker had not clearly established an organizational structure responsive to each annex. The TEB summary evaluation documents show that the evaluators were seriously concerned that Baker had not clearly demonstrated "a satisfactory approach to performing the work." The TEB concluded that Baker's rationale supporting labor, material, and equipment was "marginally acceptable" and "unclear," and that revisions would have to be made to render the proposal acceptable, suggesting that the TEB considered Baker's proposal unacceptable in this regard.

Similarly, with respect to price, the PEB concluded that Baker's price proposal was "seriously impractical." The PEB considered that: the number of proposed FTEs for nonmanagement personnel was grossly underestimated; Baker proposed no FTEs and no price for direct labor for annex 9b; and Baker proposed a high overall cost per employee, suggesting to the PEB that perhaps Baker had proposed insufficient staffing.

Based on the results of the TEB and PEB evaluations, the SSB found that the deficiencies concerning proposed staffing were significant, and that FTEs would have to be adjusted upward in order for Baker's proposal to become acceptable in this area. As a result, the SSB recommended that Baker's proposal not be considered for award. Thus, despite the rating of "marginal" assigned Baker's proposal under the "understanding and methods" evaluation subfactor, it is clear that both the PEB and the TEB considered Baker's proposal so deficient with respect to its FTEs and lack of supporting rationale, that its proposal was considered

unacceptable in this regard. Notwithstanding the "highly satisfactory" rating Baker's proposal earned under the experience evaluation subfactor, and given the "acceptable" rating assigned under the resources subfactor, in view of the evaluators' concern over Baker's proposed staffing, the TEB reasonably rated the protester's proposal "marginal" overall.

#### Discussions

Baker argues that the agency improperly awarded a contract to a higher-priced offeror without conducting discussions. The protester argues that given the evaluators' concern over its proposed staffing, and in view of its experience as a contractor providing the required services, the agency should have afforded Baker an opportunity to explain its rationale for the proposed FTE and clarify the alleged clerical error in its proposal, which would have raised its rating for subfactor (b) and its overall proposal rating above "marginal."

A Department of Defense contracting agency may make an award on the basis of initial proposals and not conduct discussions or allow offerors to revise their proposals where the solicitation advises that proposals are intended to be evaluated, and award made, without discussions with the offerors, unless discussions are determined to be necessary. 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. V 1993); FAR § 15.610(a)(4).<sup>2</sup> Here, section L of the RFP incorporated by reference FAR § 52.215-16, Alternate III, which specifically advises offerors that the agency intends to evaluate proposals and award a contract without discussions, and warns offerors to submit their best terms from a price and technical standpoint in their initial proposals.<sup>3</sup> Moreover, the RFP instructed offerors to

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<sup>2</sup>For Department of Defense, Coast Guard, and National Aeronautics and Space Administration procurements, the requirement that an award on the basis of initial proposals result in the lowest overall cost to the government has been eliminated. See FAR § 15.610(a)(3).

<sup>3</sup>Although the RFP incorporated by reference Alternate III, and indicated that Alternate III was to be found in section M of the RFP, paragraph M.3 of the RFP inadvertently contained FAR § 52.215-16(c) Alternate II, which states that the government intends to conduct discussions. While the RFP appears to have been unclear in this regard, since this ambiguity was apparent on the face of the RFP, Baker was required to seek clarification with respect to the agency's intentions or file a protest prior to the closing date. See (continued...)

clearly demonstrate in the "PROPOSAL FORM" how they planned to comply with the RFP requirements, including a full explanation of the staffing rationale for each annex. Thus, all offerors, including Baker, were on notice that the agency might not conduct discussions, and that their initial proposals should contain the most favorable terms they were prepared to offer. As discussed above, the agency's evaluation of Baker's proposal as "marginal" under the "understanding and methods" section and "marginal" overall was reasonable. Under these circumstances, the agency was not required to conduct discussions with Baker, and could properly determine that the awardee's higher-rated, slightly higher-priced proposal was most advantageous to the government. See, e.g., A Plus Servs. Unlimited, supra.

The protest is denied.

\s\ Paul Lieberman  
for Robert P. Murphy  
General Counsel

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<sup>3</sup>(...continued)

<sup>4</sup> C.F.R. § 21.2(a)(1) (1994); ADT Sec. Sys., Inc., B-249932.2, Feb. 4, 1993, 93-1 CPD ¶ 100.