



Comptroller General
of the United States

756103

Washington, D.C. 20548

Decision

Matter of: Pedus Building Services, Inc.

File: B-257271.3; B-257272.3; B-257273.3;
B-257277.3; B-257278.3; B-257281.3

Date: March 8, 1995

Warren W. Kaufman, Esq., Kaufman, Grush, Fischer & Kiss, for the protester.

Gregory H. Petkoff, Esq., and M. Steele Kenyon, Esq., Department of the Air Force, for the agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency determination to exclude protester's proposal from the competitive range was unobjectionable where the agency concluded, on the basis of an evaluation which was reasonable and consistent with the solicitation evaluation criteria and in light of the receipt of several superior proposals and the extent of the changes necessary to correct deficiencies in protester's proposal, that the proposal had no reasonable chance of being selected for award.

DECISION

Pedus Building Services, Inc. protests the exclusion of its proposal from the competitive range under six essentially identical requests for proposals (RFP) issued by the Department of the Air Force for certain hospital services at various bases. The Air Force excluded Pedus's proposal from the competitive range on the basis that it did not have a reasonable chance of being selected for award due to numerous weaknesses identified in the proposal. Pedus contends that the elimination of its proposal from the competitive range was improper.

We deny the protest.

¹The RFP numbers and the respective bases are F41622-94-R-0025 (Beale Air Force Base), F41622-94-R-0026 (Edwards), F41622-94-R-0027 (Ellsworth), F41622-94-R-0031 (Maxwell), F41622-94-R-0032 (Minot), and F41622-94-R-0035 (Sheppard).

The Air Force issued the RFPs on March 24, 1994, to obtain hospital aseptic management services at six Air Force bases. The RFPs contemplated a fixed-price contract for each base for 1 year with four 1-year options. The RFPs stated that technical criteria would be more important than price in the source selection decision.

Pedus was one of six firms which submitted proposals. Two of those firms' proposals, including Pedus's, were eliminated from the competitive range.² The agency made this determination because, as to approximately a dozen RFP specifications related to equipment and supplies, Pedus's proposal either was clearly unacceptable or failed to provide required information, thus precluding an evaluation of the proposal's acceptability. The large number of problem areas caused the agency to have concern that the offeror did not understand the contract requirements, and its proposal was therefore found to represent a high risk to the government. The agency concluded that Pedus's proposal would need to be extensively supplemented and modified in order to be made acceptable. Pedus contends that the deficiencies were primarily informational matters that should have been addressed in discussions, where they would have been readily resolved; it also argues that some of the deficiencies were caused by latent ambiguities in the RFPs.

The determination of which proposals to include in the competitive range is a decision largely committed to the discretion of the contracting officer. Nat'l Sys. Management Corp., 70 Comp. Gen. 443 (1991), 91-1 CPD ¶ 408. As guidance in the exercise of that discretion, the Federal Acquisition Regulation (FAR) directs contracting officers to include within the competitive range "all proposals that have a reasonable chance of being selected for award" and provides that, "[w]hen there is doubt as to whether a proposal is in the competitive range, the proposal should be included." FAR § 15.609(a). However, even where a proposal is fully acceptable technically (or could be rendered so through discussions), it may properly be excluded from the competitive range if, in light of the competing proposals, the contracting officer determines that the proposal has no reasonable chance of award. Curry Contracting Co., INC., B-254355, Dec. 13, 1993, 93-2 CPD ¶ 334.

In reviewing an agency's determination to exclude a proposal from the competitive range, we apply the standard used in reviewing all aspects of an agency's technical evaluation of proposals: we review the record to determine whether the

²Because Pedus submitted the identical proposal under each of the six RFPs and the evaluation was the same for all six, we resolve all of the protests in this decision.

agency's judgment, including the judgment that a particular proposal did not have a reasonable chance of award, was reasonable, supported by the record, and consistent with the applicable evaluation criteria. Tri-Services, Inc., B-256196.4, Sept. 30, 1994, 94-2 CPD ¶ 121.

Here, the Air Force found Pedus's proposal in the area of equipment and supplies to be technically unacceptable and to pose a high risk to the government. Pedus concedes that the evaluation was reasonable and consistent with the RFP criteria in identifying several weaknesses in Pedus's proposal. Thus, the protester concedes that "it overlooked the [RFP] requirement that the carpet shampoo was to incorporate a current EPA-registered sanitizer and soil retardant to reduce the spread of germs." The protester also concedes that the RFP prohibits the use of toilet bowl cleaners that are poisonous and states that it proposed one that is poisonous "by inadvertence." Pedus also acknowledges that its proposal "did inadvertently leave out the brochure [providing information about] housekeeping carts." Pedus further concedes that its proposal failed to address the RFP requirement for personal protective equipment.

The evaluators also found that Pedus had proposed inadequate quantities of some materials, which caused concern that it lacked an adequate understanding of the RFP requirements. Pedus's response is essentially that, as the incumbent at two of the bases, it knows better than the agency what the required quantities are; it offers no further justification for the quantities it proposed. We view its position as mere disagreement with the agency's technical judgment, which does not establish that the judgment was unreasonable or otherwise improper. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Pedus's experience as the incumbent does not prove that the agency's judgment in this area is unreasonable.

Similarly, Pedus argues that, because it is successfully performing under similar contracts, the agency could not reasonably conclude that the informational deficiencies demonstrated Pedus's lack of understanding of the work requirements. Pedus's reliance on its status as an incumbent is misplaced. A procuring agency's technical evaluation is dependent upon the information furnished in the offeror's proposal. Computerized Project Management

³Pedus's explanation for this failure is that the equipment is required by law and it therefore did not believe that it had to submit information about the equipment in its proposal. This explanation does not justify the failure to provide information on required equipment.

Plus, B-247063, Apr. 28, 1992, 92-1 CPD ¶ 401. An agency is not required to overlook a flawed proposal on the basis of the offeror's prior performance; on the contrary, all offerors are expected to demonstrate their capabilities in their proposals. Id. Accordingly, the agency's reliance on Pedus's proposal in determining the firm's understanding of the RFP requirements was unobjectionable.

In the factual context here, these deficiencies are sufficient to justify the elimination of Pedus's proposal from the competitive range. Where an agency receives several proposals that are superior in terms of technical merit or price (or both), it may eliminate other proposals from the competitive range, even where those proposals are fully acceptable or even considered good, if the agency reasonably concludes that those proposals do not have a realistic chance of award. Coe-Truman Technologies, Inc., B-257480, Sept. 12, 1994, 94-2 CPD ¶ 136. One factor relevant in that determination is the extent to which a proposal would need to be revised in order for it to have a reasonable chance of award. See Defense Group, Inc., B-253795, Oct. 25, 1993, 94-1 CPD ¶ 196. Here, Pedus's proposal offered a prohibited poisonous substance and failed to submit numerous items of information that Pedus concedes were required by the RFP. In light of the receipt of several superior proposals and the extent to which Pedus's proposal would need to be supplemented and modified to render it acceptable, the agency reasonably determined that Pedus's proposal did not have a reasonable chance of award.

Finally, Pedus contends that the agency should have conducted discussions to resolve the weaknesses in its proposal. Agencies are not required to conduct discussions with offerors whose proposals were eliminated from the competitive range. See FAR § 15.609(a). Since Pedus's proposal was properly eliminated from the competitive range, the agency was not required to conduct discussions with the protester.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel

⁴Because the agency could have reasonably eliminated Pedus's proposal from the competitive range on the basis of these deficiencies, we do not address the weaknesses that the protester argues resulted from ambiguities in the solicitation.