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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Medical Staffing, Inc.

File: B-259700

Date: March 6, 1995

E. Ronald Kropacek, Esq., for the protester.
Cheryl A. Phillips, Esq., and Eric A. Lile, Esq., Department
of the Navy, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Contracting agency reasonably excluded protester's proposal from the competitive range where the proposal offered no technical advantage over the remaining proposals, its price, which was fifth low, exceeded the low offeror's by 36 percent and the second-low offeror's by 31 percent, and there was no reasonable possibility that a significant price reduction would be achieved if discussions were held.

DECISION

National Medical Staffing, Inc. (NMS) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00140-94-R-CB61, issued by the Department of the Navy for the provision of diagnostic radiology, ultrasound, and transcription services to the Naval Center in Oak Harbor, Washington. NMS contends that the decision to exclude its proposal from the competitive range was unreasonable and improper.

We deny the protest.

The solicitation, issued on June 13, 1994, anticipated award of a fixed-price contract with earned incentive awards for a base period of 8 months, with four 1-year options. Offerors were to submit both price and technical proposals, with the latter to be evaluated pursuant to four evaluation factors.¹ The lowest-price, technically acceptable

¹These evaluation factors were organizational or individual experience in providing contract radiology services; comprehensive staffing plan; submission of credentials files for each radiologist; and submission of qualification

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proposal was to be selected for award.² The solicitation included the clause at Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, which cautions offerors that their initial offers should contain their best terms from a price and technical standpoint, because the agency intends to evaluate proposals and award the contract without conducting discussions. The clause reserves the right to conduct discussions if the contracting officer subsequently determines them to be necessary.

Six proposals were submitted in response to the solicitation. All of the technical proposals were reviewed and evaluated by the Technical Evaluation Committee, which concluded that all were, overall, technically unacceptable. The contracting officer concurred with this conclusion, but determined that all of the technical deficiencies in the proposals could be corrected through discussions. In accordance with FAR § 52.215-16, Alternate III, the contracting officer concluded that discussions would be necessary.

In establishing the competitive range, the contracting officer also considered the prices submitted by the six offerors. While the four lowest-priced offers were within 10 percent of each other, NMS's fifth-low offer was 36 percent higher than the lowest-priced offer, and another firm's sixth-low offer was 64 percent higher than the lowest-priced offer. Due to this significant break in the pricing array, the contracting officer excluded the two highest-priced proposals, including NMS's, from the competitive range. In making this determination, the contracting officer stated:

"Given that award will be made to the low priced, responsible offeror, whose offer conforming to the solicitation is considered technically acceptable; given that all of the proposals are considered capable of becoming technically acceptable through a round of discussions; and given that the [NMS] and [the sixth-low offeror] proposals are 36.32 [percent] and 64.71 [percent] greater than the low offeror, respectively, . . . neither . . .

¹(...continued)

packages for each ultrasound technologist, diagnostic radiologic technologist, and transcriptionist.

²While the solicitation included Defense Federal Acquisition Regulation Supplement (DFARS) § 252.219-7006, which provides an evaluation preference for small disadvantaged business (SDB) concerns, this preference was not applicable here because none of the offerors were SDB concerns.

is considered . . . to have a reasonable opportunity for award."

After NMS was informed of the contracting officer's determination to exclude its proposal from the competitive range, the firm filed this protest in our Office. NMS primarily contends that "it is common practice" for offerors to make price reductions after discussions.

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. FAR § 15.609(a); American Envtl. Servs., Inc., B-257297, Sept. 8, 1994, 94-2 CPD ¶ 97. However, even a technically acceptable proposal may be excluded from the competitive range if, based upon the array of technical ratings actually obtained by the offerors and consideration of proposed prices, the proposal does not stand a real chance of being selected for award. The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271. Indeed, cost or price not only is a proper factor for consideration, but may emerge as the dominant factor in determining whether proposals fall within the competitive range. Motorola, Inc., B-247937.2, Sept. 9, 1992, 92-2 CPD ¶ 334. We will not disturb a determination to exclude a proposal from the competitive range unless the record indicates that the determination was unreasonable. Id.

The Navy's exclusion of NMS's proposal from the competitive range was reasonable, based upon its price.³ As discussed above, the prices of the four lowest-priced offerors were within 10 percent of each other, while NMS's price was 36 percent higher than the lowest offer, and 31 percent higher than the second-lowest offer. The protester's technical deficiencies were primarily documentary in nature--the firm failed to submit adequate credentials and qualifications packages for its proposed employees, and there is nothing in the record to suggest that there were areas in NMS's proposal which, if discussed, could have reasonably caused the firm to significantly lower its price.


Moreover, even assuming that NMS would have lowered its best and final offer (BAFO) price as a matter of business judgment, the competitive range determination is based upon

³While the protester points to the agency's concession that its technical deficiencies were susceptible to correction through discussions, the record shows that the contracting officer's decision to exclude the proposal from the competitive range was based on price.

the proposals as submitted, so that a firm that does not submit its best price at the first opportunity always runs the risk of being excluded from further competition for the award. Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114. This is especially true where, as here, the solicitation explicitly cautions offerors that their initial offers should contain their best terms. FAR § 52.215-16, Alternate III. Moreover, while NMS contends that it might have lowered its price, it is unreasonable to expect that only the protester would reduce its BAFO price. American Envtl. Servs., supra.

NMS finally asserts that the government should make every effort to include it, a woman-owned small business, in the competitive range. However, NMS's status as a woman-owned small business could not be considered in the award evaluation, since it was not a specified evaluation factor on this unrestricted procurement. Moorman's Travel Serv., Inc.--Recon., B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643.

The protest is denied.


for Robert P. Murphy
General Counsel