

Wolcott



Comptroller General
of the United States

512177

Washington, D.C. 20548

Decision

Matter of: Atlantic Coast Contracting, Inc.

File: B-259082.3

Date: July 17, 1995

Ronald Draughon for the protester.
Thomas J. Duffy, Esq., Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Post-award protest challenging accuracy of manning level data provided in solicitation is untimely.
2. Where agency questioned protester regarding its proposed organization structure and advised the protester that various portions of its proposal were undermanned, the agency engaged in meaningful discussions with regard to its subsequent downgrading of protester's proposal for undermanning.
3. Where solicitation specifically stated that a 1-ton truck was recommended, agency properly downgraded protester's proposal for offering to provide only a pickup truck.
4. Protest that merely expresses disagreement with agency's evaluation judgments provides no basis for sustaining protest.

DECISION

Atlantic Coast Contracting, Inc. (ACC) protests the Department of the Army's award of a contract to Management Plus, Inc. (MPI), under request for proposals (RFP) No. DABT47-94-R-0006, for post-wide food service activities to be performed at Fort Jackson, South Carolina. ACC protests that the agency's estimated work load was inflated, that the agency failed to conduct meaningful discussions, and that the agency failed to properly evaluate its proposal and that of the awardee.

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We deny the protest.

BACKGROUND

The Department of the Army issued this solicitation on August 26, 1994, seeking proposals to perform full food service and facility management activities at Fort Jackson, South Carolina. Technical exhibit 2 of the solicitation contained over 100 pages of data regarding the projected work load for the various facilities, accompanied by the statement: "This is the data that should be used to develop the bid schedule."

Section M of the solicitation listed in descending order of importance the following evaluation factors for the technical/management proposals: (1) food preparation and management; (2) full food service; and (3) facility management.¹ Section M further provided that technical/management factors would be more important than proposed cost but that, in the event technical/management proposals were considered essentially equal, cost would become the determining factor.

On November 2, initial proposals were submitted by 14 offerors, including ACC and MPI. In evaluating technical/management proposals, the agency used a color/adjectival rating scheme of orange/exceptional, red/good, green/fair, and blue/unsatisfactory. Upon evaluating the proposals, the agency determined that six proposals, including MPI's and ACC's, were within the competitive range. ACC's technical/management proposal contained a staffing approach which relied on manning levels substantially lower than those indicated in technical exhibit 2 and the government's estimates. Based on its staffing approach, ACC's technical/management proposal was downgraded with regard to food preparation and management and full food service--the two most important evaluation factors--and ACC was rated sixth of the competitive range offerors. By letter dated January 11, 1995, ACC was advised that its proposal was included in the competitive range and

¹The solicitation stated that food preparation and management would be approximately twice as important as full food service which, in turn would be approximately twice as important as facility management. The solicitation also identified various subfactors that would be considered under each evaluation factor.

that the agency intended to conduct oral discussions on January 27. Among other things, the letter stated:

"The following areas of your proposal will be addressed:

"b. Proposed organization structure with emphasis on headquarters support and specific qualifications of key personnel.

"d. Proposed manning of the Phase-in/Transition team.

"e. Proposed replacement of many senior employees as successor contractor.

"f. Proposed man-hours for Weekday (0001AA, etc.) service in most facilities are unrealistically low based on projected work load.

"h. Proposed lease of a refrigerated truck is unnecessary."

The agency states that during oral discussions conducted on January 27, it addressed each of the concerns identified above, specifically advising ACC that its proposal was undermanned. ACC responded by asserting that the agency's data was inflated.

Best and final offers (BAFO) were subsequently submitted and evaluated by the agency. ACC's manning levels throughout its proposal continued to be lower than those indicated in the solicitation. Accordingly, ACC's technical/management BAFO was again downgraded under the two most important evaluation factors, food preparation and management and full food service, and ranked sixth of the six competitive range offerors.

DISCUSSION

ACC first protests that the solicitation overstated the Army's actual requirements, asserting that "the Army's estimated head count, number of days open and work load in general were inflated The inflation in these Technical Exhibit 2 pages [was] very obvious to ACC and we adjusted our bid to account for it"

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1995). The primary purpose of these timeliness rules is to afford parties a fair opportunity to raise objections they may have to the terms of a solicitation prior to the submission of offers, without unduly disrupting or delaying the procurement.

Here, ACC clearly knew of the alleged deficiency in the solicitation prior to submitting its proposal. In fact, it asserts that it "adjusted its bid" to account for the alleged deficiency. Accordingly, ACC's protest challenging the solicitation's manning levels is untimely and will not be considered.

ACC next asserts that the agency failed to conduct meaningful discussions in that it failed to provide sufficient, specific information regarding the various areas of its proposal that were considered to be undermanned. ACC refers to a written debriefing it received on March 17, in which the agency identified the various areas of its proposal that received less than an orange/exceptional rating. The agency responds that, in fact, both in the letter to ACC dated January 11 and during oral discussions, it repeatedly addressed the various weaknesses in ACC's proposal including ACC's general staffing approach and manning levels.

Contracting officers are required to conduct discussions with offerors whose proposals are within the competitive range. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. Such discussions must be meaningful in that they identify weaknesses, excesses, or deficiencies in proposals unless doing so would result in technical leveling or technical transfusion. Docusort, Inc., B-254852, Jan. 25, 1994, 94-1 CPD ¶ 38. Since the number and type of deficiencies and weaknesses will vary among proposals, contracting officers necessarily must have considerable discretion in determining what will be discussed with each offeror. Teledyne Brown Eng'g, B-258078; B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223. Agencies need only lead offerors generally into the areas of their proposals that require amplification and which led to the agency's decision not to select the offeror for award. EcoTek LSI, B-254506.2, Jan. 11, 1994, 94-1 CPD ¶ 13.

Here, the record shows that during discussions the agency identified multiple areas of ACC's proposal that were subsequently evaluated as constituting weaknesses or deficiencies. Among other things, the January 11 letter

specifically called ACC's attention to its organization structure generally, and further identified specific areas where its proposal was particularly undermanned. The agency's documentation regarding the oral discussions on January 27 further indicates that ACC was advised that its overall manning levels were too low. Accordingly, ACC's assertion that the agency failed to conduct meaningful discussions regarding its proposed manning levels is without merit.²

ACC next protests that the agency misevaluated its technical proposal regarding its proposed manning levels and management approach. ACC does not dispute that, in fact, its manning levels were lower than those indicated by technical exhibit 2 of the solicitation; rather, as noted above, ACC asserts that the agency's perception of the required manning levels was "inflated." In short, this portion of ACC's protest simply expresses disagreement with the agency's judgment regarding ACC's proposed staffing approach.³

The evaluation of technical proposals is primarily a matter within the contracting agency's discretion which we will not question unless we find the evaluation to be unreasonable or inconsistent with the evaluation criteria. Centro Management, Inc., B-249411.2, Dec. 2, 1992, 92-2 CPD ¶ 387. The protester's disagreement with the agency's conclusion does not render the evaluation unreasonable. Tate-Griffin Joint Venture, B-241377.2, Jan. 7, 1992, 92-1 CPD ¶ 29. On the record here, we have no basis to question the agency's judgment regarding the level of staffing required to properly perform the contract requirements.

ACC next complains that its proposal was improperly downgraded because it failed to propose a 1-ton truck to transport government property. In this regard, amendment No. 1 of the RFP contained the following statement:

"a. The Contractor shall be responsible for the movement and transportation of Government

²ACC also protests that it was improper for the agency, during discussions, to ask ACC whether it had ever been terminated while performing a food service contract. Since the solicitation specifically stated that offerors' past experience would be evaluated, this complaint is also without merit.

³As discussed above, to the extent ACC is challenging the accuracy of the manning data contained within the solicitation, the protest is untimely. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330.

furnished property The Contractor shall provide vehicles and personnel to accomplish these tasks

"b. Recommended lists and types of contractor vehicles:

- | | |
|--------------------------|----|
| "1. Truck (small pickup) | 2 |
| 2. Truck (1 ton stake) | 1 |
| 3. Cars (small admin) | 2" |

In its initial proposal, ACC proposed to provide a pickup truck and a refrigerated truck. During discussions, the agency advised ACC that a refrigerated truck was unnecessary. ACC eliminated the refrigerated truck in its BAFO, but did not substitute in its place the 1-ton truck recommended in amendment No. 1. Accordingly, ACC's BAFO was downgraded in this area.

ACC first challenges the agency's determination that a refrigerated truck was unnecessary, asserting, "I believe a good deal of the government property to be hauled is in fact government rations (food) that does require to be kept at a refrigerated temperature." In any event, ACC maintains that the agency's discussions on this matter were misleading, arguing:

"In the Army's letter of January 11 and at our discussion on January 27th, the Army stated that the refrigerated truck is 'unnecessary'. The Army didn't say the truck did not need to be refrigerated If the Army knew that the property to be transported would not fit in a pickup truck, they should have provided description of the property [to be hauled], size and weight."

As noted above, the solicitation did specifically advise offerors that a 1-ton truck would be needed. ACC's failure to read or understand this provision of the solicitation does not provide a valid basis for protesting the agency's downgrading of its proposal.

ACC also protests that its proposal was improperly evaluated with regard to experience and past performance. Section M of the solicitation provided that offerors' experience would be assessed as a subfactor under the food preparation and management evaluation factor. Section L.0 of the solicitation required offerors to provide a listing of current or recently completed government or commercial contracts for food service operations or other logistics support functions, stating: "This section [of the proposal]

must clearly demonstrate the capability to manage contractual activity of this scope and diversity."

ACC's proposal listed several contracts it had recently performed. The agency found ACC's proposal acceptable with regard to experience, but noted that ACC's prior contracts were smaller and not as complex as the one contemplated by this procurement. Accordingly, ACC's proposal received a "green/fair" rating with regard to the experience subfactor. ACC complains that its proposal should have been rated higher in this regard. Again, this portion of ACC's protest merely questions the agency's judgment regarding the level of merit properly accorded to ACC's proposal under this particular evaluation subfactor. ACC's mere disagreement with the agency's judgment provides no basis for us to sustain its protest. Centro Management, Inc., supra; Tate-Griffin Joint Venture, supra.

Finally, ACC asserts generally that the agency's rating of MPI's proposal was too high. ACC's protest does not identify any particular aspect of MPI's proposal that ACC believes was improperly evaluated, rather maintaining generally that the agency had no basis to rate MPI's proposal higher than ACC's.

Protesters are required to provide a detailed statement of the factual and legal grounds of protest. See 4 C.F.R. § 21.1(c)(4). This requirement contemplates that protesters will provide specific allegations or evidence establishing the likelihood of improper agency action. Alascom, Inc.-- Second Recon., B-250407.4, May 26, 1993, 93-1 CPD ¶ 411. With regard to the evaluation of MPI's proposal, ACC's protest fails to adequately identify any specific basis for questioning the agency's evaluation. Accordingly, we will not consider its contention further.⁴

The protest is denied.

Christine S. Melody
for Robert P. Murphy
General Counsel

⁴In any event, it is not clear that ACC qualifies as an interested party to challenge the evaluation of MPI's proposal since ACC's proposal was ranked sixth of the six competitive range offerors, ACC's proposed cost was not substantially lower than the other offerors', and ACC has not challenged the agency's evaluation of the other offerors' proposals. See 4 C.F.R. § 21.0(a).