



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Marylou's Transportation Service

File: B-261695

Date: September 28, 1995

Leroy H. Garner for the protester.

Richard E. Hurst, Esq., General Services Administration, for the agency.

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

DIGEST

Agency properly rejected protester's best and final offer (BAFO) as technically unacceptable, where the protester submitted with its BAFO a list of most, but not all of the requirements under the solicitation's scope of work, making it uncertain whether the protester was offering to satisfy the omitted material requirements.

DECISION

Marylou's Transportation Service (MTS) protests the rejection of its best and final offer (BAFO) as technically unacceptable and the award of a contract to another firm under request for proposals (RFP) No. GS11P95YXC0161, issued by the General Services Administration (GSA), for shuttle bus services for GSA employees throughout the Washington Metropolitan area.

We deny the protest.

The RFP, issued April 14, 1995, contemplates the award of a firm, fixed-price contract for a 1-year period. The RFP calls for the contractor to provide three drivers daily to operate 15 passenger vans, mini vans, and passenger vehicles. The RFP contains a "Scope of Work" section which lists 21 "services" which the contractor is required to provide, including items such as driver qualifications and responsibilities and a requirement that the contractor conduct random drug testing

on its employee drivers. The RFP states that award will be made to the "responsive" (i.e., technically acceptable) offeror proposing the lowest price.¹

GSA received nine initial proposals on April 26, and held discussions with all nine offerors. At the close of discussions, the agency found all of the proposals technically acceptable and issued a request for BAFOs to be submitted by May 12. MTS submitted a BAFO at a price of \$89,500. In the cover letter to its BAFO, MTS indicated that it will "successfully complete all requirements set forth in the above solicitation in a satisfactory manner." MTS also included with its BAFO a document, which was not required by the RFP, entitled "Marylou's Transportation Service Technical Cost Proposal," on which it listed only 16 of the 21 items that are included in the RFP's scope of work. Requirements under the RFP's Scope of Work which MTS failed to list in its BAFO include: that the normal working hours are from 8:15 a.m. to 4:45 p.m., that the shuttle service begins at 8:30 a.m. and ends at 4:20 p.m., that all drivers must be literate in the English language, and that all drivers are responsible for returning any articles left in the government-owned vehicles to the Regional Dispatcher.

Although GSA had previously regarded MTS' proposal as technically acceptable, it determined that the BAFO was technically unacceptable because of the inclusion of the incomplete list of the requirements that MTS would perform. As a result, the agency rejected MTS' low offer of \$89,500 and awarded the contract to JRS Management Company, the next low offeror, at a price of \$91,267.77. By letter dated May 31, MTS protested to GSA the evaluation of its offer and the award to another offeror. The agency denied the agency-level protest on June 12, and this protest to our Office followed.

MTS contends that the partial list included in its BAFO simply supplemented its prior technically acceptable proposal. MTS argues that it is bound by its offer to comply with all 21 of the items listed in the statement of work, and that the agency improperly rejected its proposal as technically unacceptable.

In reviewing protests concerning the propriety of an agency's evaluation of proposals, we will examine the agency's evaluation to ensure that it had a reasonable basis. GRD, Inc., B-251926, May 14, 1993, 93-1 CPD ¶ 383. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Id.

¹Since this procurement is negotiated and the concept of "nonresponsiveness" is therefore not strictly applicable, the RFP's references to "responsiveness" simply mean that the offer must be "technically acceptable." See VA Venture; St. Anthony Medical Ctr., Inc., B-222622; B-222622.2, Sept. 12, 1986, 86-2 CPD ¶ 289.

Here, we think the agency reasonably determined that MTS was not offering to meet all of the requirements of the scope of work and therefore was technically unacceptable, since MTS' "proposal" included some required items, but excluded others.² By listing some requirements from the RFP's Scope of Work and excluding other items, in what facially appears to be an inclusive list of the offeror's obligations, at the very least MTS created an ambiguity as to whether its BAFO had retained or withdrawn its commitment to perform the requirements which were not listed in its BAFO. Federal Business Sys., Inc., B-246514, Mar. 13, 1992, 92-1 CPD ¶ 283. In this respect, a BAFO may revise or supersede any aspect of a prior proposal, and the offeror takes the risk that the changes may render a previously acceptable proposal unacceptable. Control Data Corp. and KET, Inc., 60 Comp. Gen. 548 (1981), 81-1 CPD ¶ 531; see also Dynalectron Corp; Lockheed Elecs. Co., Inc., 54 Comp. Gen. 1009 (1975), 75-1 CPD ¶ 341.³

MTS argues that, if it appeared from MTS' BAFO that it did not intend to be bound by the omitted items, the agency should have obtained post-BAFO clarifications from MTS to resolve the matter. We disagree.

Given the substantive nature of the matter, any such dialogue would have constituted discussions, rather than clarifications, and would therefore have required the agency to solicit a new round of BAFOs from all offerors. Federal Acquisition Regulation §§ 15.601, 15.607, and 15.611; see SWD Assocs., B-226956.2, Sept. 16, 1987, 87-2 CPD ¶ 256. The decision to reopen discussions and request a new round of BAFOs is largely left to the discretion of the contracting officer. Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76. Where an offeror modifies its proposal by introducing material ambiguities in its BAFO, it runs the risk that the agency will exercise its discretion not to reopen discussions and will evaluate the proposal less favorably due to the ambiguities. State Technical Inst. at

²A proposal that an agency properly finds technically unacceptable may be excluded from the competitive range irrespective of its lower proposed price. Labat-Anderson, Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244.

³We do not view MTS' general statement in its cover letter that it will "successfully complete all requirements set forth in the above solicitation in a satisfactory manner," as a firm commitment to perform each of the 21 items listed in the Scope of Work. Rather, we view MTS' statement as simply affirming, in a general sense, its intention to do a good job. In any event, a blanket offer of compliance in a cover letter would not render acceptable a proposal which is otherwise noncompliant because it takes exception to the RFP's requirements. Sabre Communications Corp., 68 Comp. Gen. 279 (1989), 89-1 CPD ¶ 224.

Memphis, B-250195.2; B-250195.3, Jan. 15, 1993, 93-1 CPD ¶ 47. Contrary to the protester's position, an agency is under no obligation to reopen discussions to provide an offeror the opportunity to remedy deficiencies first introduced in the offeror's BAFO. Cubic Field Servs., Inc., B-252526, June 2, 1993, 93-1 CPD ¶ 419.

The protest is denied.

\\ Ronald Berger
for Robert P. Murphy
General Counsel