

K. Riback



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sikora & Fogleman

File: B-236960

Date: January 17, 1990

DIGEST

1. Protest alleging that contracting agency used an undisclosed evaluation criterion is denied where the record indicates that proposals were evaluated in accordance with the criteria set forth in the solicitation.
2. Protester's contention that the agency improperly determined that its proposal was technically unacceptable is denied where the allegation primarily is based on the protester's mere disagreement with the agency concerning the significance of the experience of one employee in his previous capacity, as an agency employee. Since the burden is on the offeror to submit an adequately written proposal, the agency evaluation is reasonable where the record shows that the proposal contained numerous material deficiencies.
3. Protester's argument that as the lowest priced offeror it is entitled to award is denied where protester's proposal was properly found to be technically unacceptable.

DECISION

Sikora & Fogleman (S&F) protests the determination that its proposal was technically unacceptable under request for proposals (RFP) No. HCFA-89-043-CLK, issued by the Health Care Financing Administration (HCFA), Department of Health and Human Services, for Peer Review Organization Medical Review Time & Cost Engineering Studies. S&F contends that the evaluation criteria were not properly applied, or that an undisclosed criterion was used to determine that its low priced proposal was technically unacceptable.

We deny the protest.

The RFP was issued on June 28, 1989, seeking offers for a fixed-price contract with a 14-week period of performance. The RFP stated that there would be either a single award or

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multiple awards for two geographic areas depending on which would result in the lowest overall cost to the government. The solicitation required the submission of separate technical and business proposals, and cautioned offerors that each of the parts must be separate and complete in itself so the evaluation of one could be accomplished independently of the evaluation of the other. The RFP specified that award would be made to the lowest price technically acceptable offeror, and advised that award might be made on the basis of initial proposals. The solicitation provided the following criteria and relative weights for purposes of technical evaluation:

<u>Criteria</u>	<u>Weights (Points)</u>
A. Personnel & Management	50
B. Experience	30
C. Methodology & Approach	20

By the August 2, 1989, closing date the agency received four proposals. A technical evaluation panel evaluated and scored the initial proposals, with results as follows:

Offeror A	Score 100
Offeror B	Score 88
Birch & Davis Associates	Score 88
S&F	Score 57

The panel found that S&F's proposal had no strengths, that its technical quality was poor and well below the other proposals, and that the proposal could not be made technically acceptable without extensive revision. Based on these findings, the contracting officer determined that S&F's proposal was technically unacceptable and excluded it from the competitive range. In accordance with the RFP, on August 31, the contracting officer made an award of both geographic areas, based on initial proposals, to Birch & Davis Associates, Inc., which proposed the lowest price of the three technically acceptable offerors.

S&F contends that an undisclosed criterion was used to evaluate its proposal. In this regard, the protester states only that the "five points of weaknesses outlined in the report are subjective and in most instances incorrect."

The evaluation and scoring of technical proposals is the function of the contracting agency and our review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Burnside-Ott Aviation Training Center, B-229793, Mar. 4, 1988, 88-1 CPD ¶ 236. Offerors are responsible for preparing their proposals in a manner that establishes that what is offered will meet the government's needs, and agencies are not obligated to search out omitted information or to credit offerors for information that they may have, but failed to submit with their proposal. Campbell Eng'g, Inc., B-231126, Aug. 11, 1988, 88-2 CPD ¶ 136. Our review of the technical evaluation materials does not disclose that undisclosed factors were applied, rather that S&F's proposal was reasonably determined to be technically unacceptable because it failed to evidence compliance with the stated requirements under the RFP.

First, under personnel and management, the most heavily weighted evaluation criterion, offerors were required to identify proposed professional personnel and provide resumes and proposed duties. S&F identified only three individuals who would work in the two proposed geographic areas. S&F contends that it was interested in obtaining only one of the two proposed areas and that if it had been awarded both of the contracts, it would have been able to hire additional staff. However, the RFP called for proposals to perform in both areas, and while S&F's proposal states that it would be willing to accept award for one area, it does not indicate that its proposal was limited to only one of the two areas. Furthermore, the information provided concerning S&F's three employees was incomplete; for instance, the educational background of only two of the three employees was identified.

The experience criterion called for demonstration of the type and length of specific experience in conducting time and motion engineering studies. S&F's technical proposal contained incomplete information regarding the type and length of only one time and motion engineering study that was identified as having been performed by one of S&F's principals. Under experience, the RFP also required the offeror to identify and demonstrate its organizational experience performing contracts for similar requirements. S&F did not demonstrate such experience, but maintains that the experience of its key personnel, particularly the experience which one of its principals gained as an employee of the contracting agency, should be attributed to the organization. However, the RFP called for evaluation of corporate experience separately from the experience of the

individual employees, which was also evaluated. We have recognized that the firm's experience is different from its staffs' individual experience, and we consider HCFA's separate evaluation of these areas to be proper. Professional Analysis, Inc., B-224096, Nov. 16, 1986, 86-2 CPD ¶ 579; Communications and Data Sys. Assocs., B-223988, Oct. 29, 1986, 86-2 CPD ¶ 491. Since S&F failed to include information to permit the technical evaluation panel to judge the past performance of its organization in its technical proposal, the technical evaluation panel concluded that the offeror had no successful performance and timely delivery of required products for similar requirements.

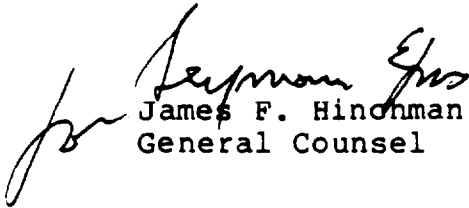
S&F contends that its technical proposal read in conjunction with its business proposal adequately provided most of the information requested in the RFP. However, the agency's technical evaluation depends solely upon the information furnished in the technical proposal, and where the technical proposal is found technically unacceptable, the agency is not required to evaluate the business proposal. Electronic Warfare Assocs., B-224504; B-223938, Nov. 3, 1986, 86-2 CPD ¶ 514. Further, S&F was explicitly instructed in the RFP to prepare both the technical and business proposals separately and completely "so the evaluation of one may be accomplished independently of evaluation of another." Thus, S&F incorrectly assumed that the technical evaluation panel would obtain information not included in the technical proposal from its business proposal. In any event, we have reviewed the business proposal and it does not adequately provide the required omitted information.

In the alternative, S&F argues that its proposal was not reviewed in good faith by the technical evaluation panel. The protest provides no support for this allegation besides stating that the panel lacked concrete technical reasons and accurate information. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition, and unsupported allegations do not establish bad faith. Communications and Data Sys. Assocs., B-223988, supra.

S&F also contends that as the lowest priced offeror, it should have received the award. However, S&F's low price is irrelevant since its proposal was properly found technically unacceptable, and once a proposal is found technically unacceptable, it cannot be considered for award. Johnson Energy Management Co., Inc., B-234730, June 8, 1989, 89-1 CPD ¶ 540.

Finally, S&F contends that it was improper for the HCFA to delay notifying it that its offer was technically unacceptable until S&F received the agency report on this protest on October 25. While this information was not in the written notice of award,^{1/} the agency asserts that the protester was orally notified that its offer was found to be technically unacceptable on September 8. Even if the protester is correct, and the agency failed to promptly notify the protester of its exclusion from the competitive range, such late notice is only procedural in nature and does not affect the validity of an otherwise properly awarded contract. Hamilton Enters., Inc., B-230736.6, Dec. 20, 1988, 88-2 CPD ¶ 604.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} The initial protest was based upon the argument that but for the misapplication of evaluation criteria or the application of an undisclosed criterion S&F should have received the award as the low-priced offeror.