



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ervin & Associates, Inc.

File: B-280993

Date: December 17, 1998

John J. Ervin for the protester.

Bruce M. Kasson, Esq., Department of Housing & Urban Development, 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's determination that protester's initial proposal was technically unacceptable and outside the competitive range was reasonable where the proposal would require major revisions in order to become acceptable.

DECISION

Ervin & Associates, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. R-OPC-21123, issued by the Department for Housing and Urban Development (HUD) for property inspection services.¹

We deny the protest.

BACKGROUND

Before the property inspection program contemplated under this solicitation was operational, HUD contracted with two firms under the General Services Administration Federal Supply Schedule (FSS) for management, organizational, and business improvement services (MOBIS) contracts which required the contractors to perform property inspections and to pilot test a newly developed software and protocol. The MOBIS contractors were also to provide feedback and analysis to HUD regarding the new software and protocol before the property inspection program contemplated under this contract was fully operational. The inspectors for the MOBIS contractors and subcontractors were required to attend a training course in order to become certified to use the hardware and software to support collection

¹The purpose of this contract is to inspect properties with HUD-held mortgages, properties for which HUD acts as the section 8 contract administrator, and properties owned by public housing agencies.

of the testing information. The certification that these inspectors received as a result of this training expires upon the completion of the MOBIS contracts.

The solicitation in question was issued on June 4, 1998, to manage the performance of property inspections in three discrete geographical areas. The RFP requires that the contractors perform property inspections using HUD-certified inspectors, with hand-held computers, also known as data collection devices (DCDs), provided by the contractor, and using HUD's recently developed property inspection software. All data collected during inspections is required to be electronically transmitted from the inspector's DCD to the agency via the Internet, where the data will be evaluated and used to generate a score for the physical condition of the property.

Award was to be based on a best value analysis using the following evaluation factors: prior experience (20), past performance (20), management capability (30), and training and quality control (30), for a maximum possible score of 100 points. Technical merit was more important than cost in the award decision. The RFP contemplated the issuance of one or more requirements contracts with fixed-price line items.

By the July 23 closing time the agency received a total of 35 proposals from 20 different offerors for three geographic areas (9 proposals for Area 1, 12 proposals for Area 2, and 14 proposals for Area 3). The protester submitted a proposal for consideration under each of the three areas.

The technical evaluation panel (TEP) evaluated proposals under the RFP evaluation scheme and established a competitive range for each area. Five technically acceptable proposals were included in the competitive range for Area 1, four acceptable proposals and two proposals that were capable of being made acceptable were included in the competitive range for Area 2, and four acceptable proposals were included in the competitive range for Area 3. The technical scores received by the proposals that were included in the competitive ranges were all between 70 and 88.5 points. The TEP determined that 13 offerors, including the protester, submitted proposals that contained serious deficiencies warranting evaluation as technically unacceptable, and these proposals were excluded from the competitive range. Ervin's proposal received a total technical score of 41 points for Area 1, 42 points for Area 2, and 43 points for Area 3, and its proposal, for each area, was found technically unacceptable. The TEP concluded that Ervin's proposal "materially failed to address the requirements of this solicitation and contained material weaknesses which increase the risk of unsuccessful contract performance." TEP Initial Evaluation Report at 24. The agency conducted discussions with the competitive range offerors, requested best and final offers (BAFO), and reevaluated the proposals based on the BAFOs. The agency determined that Building Inspection Services submitted the proposal for Area 1 most advantageous to the government, and that MTB Investments, Inc. submitted proposals for Areas 2 and 3 that were

most advantageous to the government, and on August 18, awarded contracts to those firms. This protest to our Office followed Ervin's debriefing by the agency.

Ervin challenges the awards on numerous grounds, all of which we have carefully considered and find without merit. We will address Ervin's principal allegations below.

DISCUSSION

Evaluation Of Ervin's Proposal

Ervin objects that its proposal should not have been eliminated from the competitive range because its proposal "clearly reflect[ed] its ability to perform physical inspections." Ervin's Comments at 6. The protester also contends that "HUD is (and has been) thoroughly aware of Ervin's capabilities to perform such inspections, and to manage and perform large data collection and submission contracts." Id.

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency, and in reviewing an agency's evaluation of proposals and subsequent competitive range determination we will not evaluate the proposals anew in order to make our own determination as their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair and reasonable and consistent with the evaluation criteria. Spectrum Sciences & Software, B-280700, Nov. 9, 1998, 98-2 CPD ¶ ___ at 4. A protester's mere disagreement with an agency's evaluation does not, without more, establish that the evaluation was unreasonable. Beneco Enters., Inc., B-278591, Feb. 17, 1998, 98-1 CPD ¶ 91 at 3.

Solicitations issued after January 1, 1998, such as this one, are governed by the Federal Acquisition Regulation (FAR) as amended by the Federal Acquisition Circular (FAC) No. 97-02, which includes the Part 15 rewrite. The current language concerning the composition of the competitive range states that "[b]ased on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency" FAR § 15.306(c)(1) (FAC 97-02). We do not read the revised language to require agencies to retain in the competitive range a proposal that the agency reasonably concludes has no realistic prospect of award. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. Because the record here establishes that the agency reasonably concluded that the protester's initial proposal was technically unacceptable and would require major revision or rewrite to be made acceptable, the agency properly determined not to include Ervin's proposal in any of the competitive ranges. See Spectrum Sciences & Software, *supra*, at 5.

The record shows that the TEP identified numerous informational deficiencies and significant weaknesses in Ervin's technical proposal, leading the evaluators to conclude that Ervin had failed to demonstrate awareness and understanding of the complexities of the contemplated contracts. As a result, the protester's proposal was severely downgraded under all evaluation factors, resulting, as noted above, in total scores of 41 points out of 100 for Area 1, 42 points for Area 2, and 43 points for Area 3.

For example, under the prior experience factor, Ervin's proposal received scores ranging from 8 to 12 points out of a possible 20. The TEP downgraded Ervin's proposal for failing to provide an organizational chart. While Ervin concedes that it did not include an organizational chart with its proposal, it argues that the requisite information was included in various other sections of its proposal. In this regard, the protester disregarded the RFP's instructions to respond to each factor separately and not rely on information in one factor to be part of the response for another factor.

Ervin's proposal received scores ranging from 10 to 13 points out of a possible 20, under the past performance evaluation factor. Ervin's inclusion in its proposal of only scant information on the successful performance of similar work of its one proposed subcontractor was considered a significant weakness under this evaluation factor. The protester asserts in its comments that its proposed subcontractor is "the largest single property inspector in the country." Ervin's Comments at 11. The protester seems to argue that the evaluators should have been aware of its proposed subcontractor's performance of similar work. However, an offeror must demonstrate affirmatively the merits of its proposal, and it runs the risk of rejection if it fails to do so. Vista Videocassette Servs., Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55 at 5. Here, the agency properly evaluated Ervin's proposed subcontractor's past performance on the basis of the material contained in Ervin's proposal. Our review of the record confirms that the agency reasonably concluded that Ervin's proposal failed to demonstrate that its proposed subcontractor had successfully performed similar work.

Under the management capability factor, Ervin's proposal received scores ranging from 8 to 12 points out of a possible 30. The management capability factor evaluates, among other things, the offeror's ability to execute the mechanics of the contract, this means proposing the appropriate hardware that will interact with the HUD-provided software and software updates. RFP at 50. The TEP concluded that while "the offeror has a general understanding of the services required," the Ervin proposal failed to acknowledge the computer operations as described in the RFP. TEP Initial Evaluation Report at 23. For example, Ervin's proposal failed to specify the computer hardware and software that it would use to electronically transmit, via the Internet, the inspection results to HUD. In this regard Ervin's proposal states that "[w]e have already begun research into the best possible hardware to be utilized for this engagement." Ervin's Technical Proposal, Section 3 at 6. While

Ervin asserts that its proposal "acknowledged" the operation of the HUD system, as defined by the IFB, Ervin does not contend that its proposal contained specifics such as what computer hardware it would use. Ervin's Comments at 13. The technical evaluation of a proposal is based on information submitted in it and an offeror runs the risk of having its proposal rejected if the proposal submitted is inadequately written. Defense Sys. Concepts, B-242755.2, July 1, 1991, 91-2 CPD ¶ 2 at 7. This principle is particularly applicable where, as here, the offeror's recognition and discussions of specific information served as an indicator of whether it understood the work to be performed.

Ervin's proposal also included, under the management capability factor, the development of a database, which was not required, "to track the name, address, and other salient features of the projects to be inspected." Ervin's Technical Proposal Section 3 at 6. Ervin argues that this database, which would operate as an internal control mechanism, was not properly scored by the TEP. The RFP simply did not require a database that would track information relating to each inspection and would operate as an internal control mechanism; rather, the solicitation requested that the offeror provide specifics relating to the computer hardware that it will provide to interact with the HUD-provided software and software updates. In our view, the agency acted reasonably in not giving Ervin's proposal extra credit for the submission of an additional database that was not requested.

Ervin's proposal received scores ranging from 6 to 9 points under the training and quality control factor. The TEP found two significant weaknesses in Ervin's proposal under this evaluation factor. First, the TEP determined that Ervin's proposal did not propose a plan for dealing with conflicts of interest that may arise during the course of this contract. Ervin's proposal states that there are no potential conflicts of interest and that it will require inspectors to sign a statement that they have none. Ervin's Technical Proposal, Section 4 at 4. The TEP determined that Ervin's general statement of compliance regarding conflicts of interest exhibited a basic misunderstanding of the issue. Particularly as noted by one evaluator, "when they are stating that they will be drawing from 650 or so inspectors from around the country—one would presume that in order to have sufficient expertise to perform this work they have other jobs and relationships than only this contract." Evaluation of Ervin's Proposal for Area 3 at 18. Ervin did not address the TEP's criticism of its proposal concerning its lack of a plan for dealing with conflicts of interest that may arise, and we have no basis to question the TEP's evaluation of Ervin's proposal in this regard.

The second evaluated significant weakness in Ervin's proposal under the training and quality control factor was that its quality control plan was determined to be "basic and generic." TEP Initial Evaluation Report at 63. The TEP noted that Ervin's proposal stated that inspectors were to be monitored "periodically" with no explanation of "whether this means every few months or twice a day, as opposed to a plan outlining some statistical percentage." TEP Initial Evaluation Report at 63.

Ervin argues that it was not possible for it to state how frequently it will monitor its inspectors, because, "[i]f inspectors know when and how their work will be reviewed, unscrupulous inspectors would be able to manipulate their work to accommodate the Quality Control Plan, instead of constantly providing the highest quality work product on a continuing basis." Ervin's Comments at 17-18. However, responses that are essentially blanket offers of compliance are not adequate substitutes for the detailed and complete technical information necessary to establish that what the offeror proposes will meet the agency's needs. M.C. Dean Elec. Contracting, Inc., B-246193, Feb. 24, 1992, 92-1 CPD ¶ 219 at 4. We agree with the TEP that it is possible to state how frequently inspectors will be monitored without alerting them to what specific inspections will be monitored. In our view, the agency reasonably downgraded Ervin's proposal for its failure to give some indication regarding how frequently inspectors will be monitored.

The record makes clear that the TEP reasonably downgraded Ervin's proposal, in substantial measure for failing to provide required information showing that Ervin understood the requirements and the complexities of the contemplated contracts. These assessments accurately reflect the content of Ervin's proposal, notwithstanding the protester's disagreement with them. Accordingly, we have no basis to question the TEP's conclusion, based on these findings, that Ervin's proposal was technically unacceptable, and the proposal properly was eliminated from the competitive range for the three geographical areas.

Other Issues

The protester argues that the awardees enjoyed a competitive advantage as a result of their experience as subcontractors under the MOBIS contracts. Specifically, the protester notes that personnel from these firms attended an inspector training session during the pendency of this procurement to become certified to use the hardware and software to support collection of the testing information.² Notwithstanding Ervin's contention that these offerors had an unfair competitive advantage because they gained their relevant knowledge and experience through their incumbency, it is not unusual for a contractor to enjoy an advantage in competing for a government contract by reason of such experience, and such an advantage, so long as it is not the result of preferential treatment or other unfair action by the government, need not be discounted or equalized. STS Strategic Techs. & Sciences, Inc., B-257980, B-257980.2, Nov. 17, 1994, 94-2 CPD ¶ 194 at 6. In particular, an agency is not required to structure a solicitation so as to neutralize natural advantages gained by incumbency, such as having qualified personnel and possessing a clear understanding of the areas the agency intends to evaluate.

²Personnel from Building Inspection Services and MTB attended the MOBIS inspector training because those firms were subcontractors to the MOBIS contractors.

LaQue Ctr. for Corrosion Tech., Inc., B-245296, Dec. 23, 1991, 91-2 CPD ¶ 577 at 6-7. Here, the record provides no basis to question the propriety of the FSS contracts, thus Ervin's assertion that Building Inspection Services, Inc. and MTB Investments, Inc. enjoyed a resulting unfair competitive advantage is without merit.

Finally, the protester argues that the TEP is biased against Ervin. Specifically, Ervin contends that the TEP members "know Ervin's capabilities well," and "purposefully underscore[d]" its proposal. Ervin's Comments at 1. Offerors are expected to demonstrate their capabilities in their proposals rather than simply relying on what they believe is known about them by contracting officials; those who do not furnish detailed, comprehensive proposals do so at their own risk. Agriculture Tech. Partners, B-272978, B-272978.2, Dec. 5, 1996, 96-2 CPD ¶ 226 at 5. Since we find no error in the evaluation of Ervin's proposal, we have no basis to conclude that the TEP was biased and acted with specific intent to injure Ervin. Hill's Capitol Sec., Inc., B-250983, Mar. 2, 1993, 93-1 CPD ¶ 190 at 3-4.

The protest is denied.

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