



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Shelby's Gourmet Foods

File: B-270585

Date: March 22, 1996

Albert S. C. Millar, Jr., Esq., for the protester.

Michael Trovarelli, Esq., Susan L. Extein, Esq., Defense Logistics Agency, for the agency.

Christine Davis, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably eliminated the protester's seriously deficient proposal from the competitive range in a prime vendor procurement to obtain full line food supplies for five military bases, where the proposal did not adequately describe how the protester would satisfy a contract of this scope and complexity.

DECISION

Shelby's Gourmet Foods protests the rejection of its proposal from the competitive range and the terms of request for proposals (RFP) No. SPO300-95-R-4000, issued by the Department of Defense (DOD), Defense Logistics Agency (DLA), to obtain a "prime vendor" to supply a full line of food products to various military installations in North Carolina.

We deny the protest.

In 1993, DOD introduced the Prime Vendor acquisition method of procuring food products, which is designed to use commercial practices and commercial items to the greatest extent possible. Traditionally, DOD purchased a single food item or a limited number of items per solicitation; used military specifications to define the item(s); and provided for delivery to DOD depots where the government would store and redistribute the food in response to customer requests. In contrast, under the Prime Vendor acquisition method, a single contractor supplies a full line of commercially available food products; uses electronic catalogues and an electronic ordering system; and employs a commercial distribution system. Under such a distribution system, each military installation orders its immediate food requirements from the contractor, who supplies the food directly to the installation in routine, bulk shipments.

The instant prime vendor RFP, issued on an unrestricted basis, contemplated an indefinite quantity, indefinite delivery contract to supply food to five military bases in North Carolina.¹ There were 64 delivery points at the five military installations, and each delivery point required three weekly deliveries composed of any of the 3,000 items on the RFP schedule. These 3,000 food items encompassed the entire range of food products, e.g., fish, meat, poultry, fresh fruits and vegetables, dairy products, chilled foods, frozen foods, semi-perishable and canned foods, baked goods, and confections. The estimated cost of supplying the food to the five specified bases was \$25.1 million per year for a base and 3 option years.

The RFP advised that, of the 3,000 solicited food items, 120 items would probably account for 80 percent of the total amount spent under the contract. The RFP provided quantity estimates for these 120 items, for which it requested unit and extended prices, which were used to determine each offeror's total price.²

The RFP stated a "best value" evaluation scheme, in which technical quality was more important than price. The technical evaluation was based upon 6 factors and 14 subfactors as follows:

A. Distribution, Delivery System, and Location

1. Product Availability
2. Ordering System
3. Location
4. Surge/Mobilization Capability
5. Product Sourcing

B. Corporate Experience

1. Past Performance and Experience
2. Organizational Support

¹The bases were Seymour and Pope Air Force Bases, Fort Bragg, Camp Lejeune, and Cherry Point Marine Corps Air Station.

²As for the remaining items on the schedule, the RFP requested fixed prices reflecting each item's indirect and distribution costs, but not the item's invoice price. The prices for the remaining items were not used to calculate each offeror's total price, although they were comparatively evaluated.

C. Quality Program

1. Quality Control Procedures
2. Inspection Procedures
3. Storage Procedures
4. Supplier Selection
5. Product Descriptions

D. Socioeconomic Considerations

E. Procurement Pricing Plan

1. Purchasing Procedures
2. Unit Pricing

F. Small Entrepreneurial Enhancement Development (SEED) Program

The technical factors were listed in descending order of importance. The RFP thoroughly described what the government expected the offeror to demonstrate under each technical factor and subfactor. Furthermore, the RFP authorized the government to conduct site visits to verify information in the offerors' proposals. Under the evaluation plan for this procurement, an offeror could earn a rating of "highly acceptable," "acceptable," "marginally acceptable," or "unacceptable," under the various factors and subfactors.

The agency received three proposals by July 27, 1995. Shelby's, a small business, submitted the low-priced proposal. Shelby's represented, pursuant to Federal Acquisition Regulation (FAR) § 52.215-6, that it was submitting its offer as a corporation, as opposed to a joint venture or a partnership, and Shelby's proposal contained no information suggesting a joint venture or partnership arrangement. In its 2-1/2-page technical proposal, Shelby's listed its prior DOD food service contracts, which ranged in value from \$17,271.60 to \$143,747.78. Under the Distribution, Delivery System and Location factor, the protester stated that it owned a computer to receive product orders; that it owned a delivery truck and could rent other trucks; and that its warehouse was inspected by a military veterinarian and the Georgia Department of Agriculture. The protester addressed the Quality Program factor by stating that it "always look[ed] for quality products backed by a replacement guarantee."

From August 15 to August 17, the technical evaluation panel (TEP) visited the site or sites designated by each offeror as its place of performance. The protester's proposal listed a single site as its place of performance--Shelby's warehouse in St. Mary's, Georgia near Jacksonville, Florida. The TEP judged from the site visit that the protester's warehouse, inventory, computer resources, quality assurance

program, distribution system and organizational structure were inadequate to support a contract of this size and complexity. For example, the TEP stated that the protester had "no [organizational] structure outside of owner. Owner is buyer, loader, driver, [quality assurance] and whatever else is needed." Although the protester stated at the site visit that it could obtain adequate supplies and additional warehouse space from two Jacksonville-based suppliers (Jacksonville Hotel Supply Co. (JHS) and Winn-Dixie Grocery Co.), the protester did not describe the alternate warehouse facilities and could not give a "viable answer" as to how it would "receive orders, purchase varying quantities of up to 500 items, receive them, breakdown [and] load orders, and deliver to 50 - 60 points across [North Carolina] in less than 48 [hours or] as little as 4 - 6 [hours]."

On August 29, the contracting officer requested additional information from each offeror to complete the proposal evaluation. The contracting officer advised Shelby's that it had not adequately addressed any of the evaluation factors, and asked Shelby's to review the solicitation requirements and to provide the required information. In its response, Shelby's provided more proposal information and also asserted that Winn-Dixie and JHS were Shelby's joint venturers in the competition. Shelby's submission prompted the contracting officer to request "a written joint venture agreement, or any other legal documentation to support your claim of a joint venture." In response, Shelby's produced letters from JHS' Vice President, who affirmed the claimed joint venture arrangement,³ and a letter from Winn-Dixie's Jacksonville location director, who did not.

On November 1, 1995, the contracting officer completed his review of the offerors' proposals and all evaluation documentation generated by the business evaluation panel and the TEP. Based upon this review, the contracting officer concluded that the protester's technical proposal was unacceptable overall and eliminated it from the competitive range. The agency found Shelby's proposal unacceptable in 9 of the 10 subfactors comprising the most important Distribution, Delivery System and Location factor and the third-most important Quality Program factor. With respect to the second-most important Corporate Experience factor, Shelby's proposal received an unacceptable rating under the Organizational Support subfactor and a neutral rating under the Past Performance and Experience subfactor (which was accorded because the protester was found to possess no relevant experience, see FAR § 15.608(a)(2)(iii)).⁴

³In an earlier letter, JHS's Vice President described Shelby's as a "customer."

⁴As for the remaining evaluation factors and subfactors, the protester's proposal received marginally acceptable ratings under both Procurement Pricing Plan subfactors, a highly acceptable rating under the Socioeconomic Considerations
(continued...)

Among the major deficiencies attributed to Shelby's proposal was its failure to include a plan for ensuring that orders could be filled and delivered according to the contract requirements, particularly given that Shelby's own inventory and warehouse were inadequate to meet the demands imposed by the RFP. Although Shelby's stated that it could obtain sufficient stock and adequate warehouse space from Winn-Dixie and JHS, the agency found that Shelby's had not substantiated its claim of a joint venture with these firms, and that neither firm promised to reserve any inventory or warehouse space for Shelby's or to play a specific role in meeting the contract requirements. Even though Shelby's was evidently a high-volume customer of these firms, Shelby's did not state which firm would be responsible for coordinating individual orders and consolidating shipments, where shipments would originate, which firm would make shipment arrangements, or how long it would take to make deliveries. Compounding this problem was the fact that Shelby's owned only one small, non-refrigerated delivery truck and proposed to use rented trucks from a Wilmington, North Carolina, firm to meet the contract requirements. In the absence of any explanation from Shelby's, the contracting officer presumed that the trucks would travel from North Carolina to Jacksonville to retrieve the food, then from Jacksonville to North Carolina to deliver it, which the contracting officer viewed as highly inefficient.⁵

The contracting officer further found that Shelby's never addressed the Organizational Support subfactor, which required offerors to describe key personnel and their functions and to provide an organizational chart showing the individuals involved in contract performance. Similarly, the contracting officer found that Shelby's submitted "so little information under all the [Quality Program] subfactors . . . that the response must be considered nonexistent." Specifically, the contracting officer found that Shelby's relied upon general statements, such as "we select the best," or "I always look for quality products," instead of describing the procedures and furnishing the documentation required by the Quality Program subfactors.

The contracting officer advised the protester of its proposal's elimination from the competitive range on November 8. Shelby's protests that DLA lacked a reasonable basis for excluding its proposal from the competitive range.

⁴(...continued)
factor, and an acceptable rating under the SEED Program factor. The favorable ratings were not deemed sufficient to overcome the deficiencies under the more significant evaluation factors.

⁵Shelby's also failed to address whether the rented trucks would meet the RFP's refrigeration and dry storage requirements.

The evaluation of proposals and the resulting determination of whether a proposal is within the competitive range is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83. Our Office will only question the agency's evaluation where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. See General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. A protester's mere disagreement with the agency's technical evaluation does not establish that the evaluation was unreasonable. DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95.

The record reasonably supports DLA's conclusion that Shelby's submitted a seriously deficient technical proposal that did not demonstrate the firm's ability to perform a contract of this scope and complexity, and Shelby's proposal was therefore properly rejected. From our review, the reasons given by DLA for finding Shelby's proposal unacceptable, as set forth above, were reasonably based. It is apparent from the record that Shelby's, whose experience was limited to much smaller food service contracts, did not appreciate the significantly enhanced requirements imposed by this RFP and did not structure its proposal to meet such requirements. In our view, DLA's rejection of Shelby's proposal was reasonable.

The protester's specific objections to the technical evaluation in no way cause us to question the reasonableness of the evaluation. For example, the protester claims that DLA should have accepted its representation that it could make timely deliveries, instead of questioning Shelby's ostensible use of North Carolina rental trucks to retrieve food from Florida and return to North Carolina. Shelby's simply asserts that "rhetorical questions as to how the product would get to the trucks would seem a little unnecessary." Similarly, the protester argues that its proposal to obtain adequate supplies "from the Winn-Dixie warehouse on 24 hour notice, day or night," was "self-explanatory on its face," and that DLA had no basis to criticize the adequacy of Shelby's ordering and distribution system. Contrary to the protester's bald objections, we think that DLA reasonably questioned these areas of Shelby's proposal and was entitled to probe beyond Shelby's blanket assurances that it could perform the contract.

Shelby's argues that DLA should have made site visits to Winn-Dixie's and JHS' facilities and credited Shelby's proposal with their resources and experience, since Shelby's in fact substantiated its joint venture with these firms. This allegation has no merit.

Joint ventures are recognized legal entities for contracting with the government. See FAR subpart 9.6. A joint venture is an association of persons or firms with an intent, by way of contract, to engage in and carry out a single business venture for joint profit, for which purpose they combine their efforts, property, money, skill and

knowledge. See T.V. Travel, Inc.; World Travel Advisors, Inc.; General Servs. Admin.--Recon., 65 Comp. Gen. 109 (1985), 85-2 CPD ¶ 640. In this case, Shelby's was requested to produce "a written joint venture agreement, or any other legal documentation to support [its] claim of a joint venture." Shelby's did not produce such a joint venture agreement or documentation, nor has Shelby's ever claimed during the course of this protest that such documentation exists. Absent such an agreement designating the responsibilities, profits, liabilities and resources shared by the participating firms, the contracting officer was not required to accept Shelby's and JHS' blanket affirmation of a joint venture arrangement.⁶ Moreover, it is notable that Shelby's did not represent itself as a joint venture pursuant to FAR § 52.215-6, did not designate any other firms' facilities as performance sites, and did not develop a technical approach integrating the responsibilities of its purported partners.

Finally, Shelby's protests that the Prime Vendor acquisition method and the RFP evaluation scheme are biased in favor of large businesses. Shelby's asserts that large businesses are more likely than small businesses to submit higher-priced, technically superior proposals in response to a Prime Vendor acquisition. Shelby's argues that the agency should have neutralized this advantage by making price a more important evaluation factor, using all items on the RFP pricing schedule to calculate an offeror's total price, and making Corporate Experience a less important evaluation factor.

These allegations concern solicitation defects, which Shelby's should have protested before initial proposals were due in order to be considered timely under our Bid Protest Regulations, section 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)). Shelby's concedes that the alleged defects were "apparent from the face" of the solicitation, but maintains that "it was not until the evaluation process was observed in action that it became crystal clear that the prime vendor concept was not designed to effect cost savings." Our Bid Protest Regulations do not entitle protesters to wait until their proposals are rejected to protest such apparent solicitation defects. Shelby's could have protested the acquisition strategy before initial proposals were due, but chose instead to compete under this strategy. We will not now hear Shelby's untimely objections to the RFP.

The protest is denied.

Comptroller General
of the United States

⁶As noted above, Winn-Dixie, although it did "not foresee any difficulties in providing . . . support" to Shelby's, never affirmed a joint venture arrangement as to this procurement, contrary to the protester's apparent belief.