



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Trataros Construction, Inc.

File: B-271879.2

Date: October 31, 1996

Costas N. Trataros for the protester.

Richard P. Castiglia, Jr., Esq., Department of the Air Force, for the agency.

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

DIGEST

Proposal that received less than acceptable ratings in 13 of 17 evaluation areas was properly eliminated from the competitive range where the agency reasonably determined that in order to be rated acceptable, the proposal would have to be substantially rewritten.

DECISION

Trataros Construction, Inc. protests the decision of the Department of the Air Force to eliminate its proposal from the competitive range under request for proposals (RFP) No. F28609-95-R0004 for a Simplified Acquisition of Base Engineering Requirements (SABER) contract at McGuire Air Force Base in New Jersey.¹

We deny the protest.

The RFP was issued on February 14, 1996. Award was to be made to the offeror whose proposal was determined to be the most advantageous to the government considering technical/management factors and cost, with technical/management factors identified as more important. Five technical management factors, which were subdivided into subfactors, were listed in descending order of importance: project development/planning and minimal design; project management ability;

¹We previously dismissed Trataros's protest for failure to file comments on the agency report or request an extension within 14 calendar days after receipt of the report as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(h) (1996). At Trataros's request we subsequently investigated our Office mail logs and confirmed that the protester had in fact filed timely comments with our Office which inadvertently had not been forwarded to the cognizant location. Under these circumstances, we will consider the merits of the protest.

subcontracting and support capability; project execution and technical capability; and experience and past and present performance. Each subfactor was to be rated on a color-coded scale² and given a risk rating. Technical/management proposals were limited to 75 pages and the RFP cautioned offerors that incomplete submissions could be rejected without evaluation. Offerors were also cautioned that unrealistically low cost proposals could be rejected without further evaluation.

Eleven offerors responded by the March 27 closing date. Trataros's proposal was rated as followed:

Factor/Subfactor	Rating	Risk	Necessary Revisions
1. Development, Planning, Design			
a. Minimal Design	Red	High	Major
b. Development/Planning	Red	High	Complete
2. Management Ability			
a. Startup/Contingencies	Red	High	Complete
b. Key Management Staff	Yellow	Low	Minor
c. Quality Control (QC) Plan	Yellow	High	Moderate
d. Support/Interface/Staff	Green	Low	None
e. Financial Resources	Green	Low	None
f. Warranty and Punchlist Resources	Red	High	Major
3. Subcontracting Support Capability			
a. Purchasing System/Support Level	Red	High	Major
b. Subcontract Management	Yellow	Moderate	Moderate
c. I.D. of Key Subs and Suppliers	Red	Moderate	Major

²Blue (exceptional); green (acceptable); yellow (marginal); red (unacceptable).

4. Execution and Tech. Capability			
a. Key Support Staff	Yellow	Low	Major
b. Demonstration Level-of-Effort	Red	High	Major
c. Demonstration Alternatives	Red	High	Major
d. (No offers were evaluated under this subfactor.)			
e. Demonstration Price Completeness	Red	High	Major
5. Experience/Performance			
a. Recent Construction Experience	Green	Low	None
b. Recent Construction Management Experience	Green	Low	None

In addition, Trataros's cost proposal was found to be unacceptable because it did not provide sufficient information regarding mobilization and demobilization expenses, bond premiums or a proportional share of home office overhead. The agency also found that Trataros failed to adequately explain and support the price coefficients set forth in its proposal; the Air Force states that these deficiencies were particularly troublesome because Trataros's estimate of demonstration project costs was 60-percent lower than the government's estimate and substantially below the estimates of other offerors. Based on the technical/management review and the cost proposal review, the Air Force concluded that major revisions were required to make Trataros's offer acceptable and consequently eliminated the offer from the competitive range.³ The competitive range determination was documented in summary fashion on April 15, and by letter of April 18, Trataros was informed of the general reasons for the decision. This protest followed.

Trataros takes exception, in whole or in part, to all of the deficiencies noted by the agency. Further, Trataros asserts that only the reasons set forth in the April 15 determination document may be considered in our analysis of the agency's evaluation, notwithstanding the fact that the agency presented its full rationale for the exclusion of the protester's proposal in its report on the protest. Trataros also argues that, notwithstanding deficiencies in its proposal, the agency should have included the proposal in the competitive range because of Trataros's successful past performance on similar contracts with other Air Force bases and the United States Military Academy.

³Trataros's offer was one of five eliminated from the competitive range.

Prior to considering the challenges to the Air Force's evaluation, we note that Trataros is incorrect in its assertion that the agency may not be permitted an opportunity to present all of the reasons for its competitive range determination during the protest process. While agencies must document the basis for their evaluation and award decisions, the fact that the documentation was not contained in the contemporaneous procurement file but is furnished as part of the record in response to a protest does not preclude our consideration of it in determining the reasonableness of the agency's actions. Criterion Corp., B-266050, Jan. 23, 1996, 96-1 CPD ¶ 217. Here, the details of the agency's analysis were clearly spelled out in the report submitted for our review in response to the protester's allegations; in such circumstances, we will review the entire record to determine whether the agency acted reasonably in its evaluation of offers.

Also as a preliminary matter, we note that Trataros's argument that the competitive range determination should have been based on its successful performance history on other contracts is without merit. No matter how competent a contractor may be, an agency properly may base its technical evaluation on the information provided in an offeror's proposal in response to the requirements set forth in the solicitation. Eastern Technical Enters., Inc., B-259844, May 8, 1995, 95-1 CPD ¶ 232.

The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method of meeting them. Thus, it is not the function of this Office to evaluate proposals de novo and we will not disturb a determination absent a showing that it was unreasonable. Atlantic Coast Contracting, Inc., B-270645.2, May 24, 1996, 96-1 CPD ¶ 252. A protester's mere disagreement with an agency's evaluation does not, without more, establish that the evaluation was unreasonable. Keco Indus., Inc., B-261159, Aug. 25, 1995, 95-2 CPD ¶ 85.

Our review of the record of the evaluation and the protester's arguments discloses no basis for disturbing the competitive range determination. As the following examples reveal, the protester has at best shown mere disagreement with the agency's evaluation of its proposal.

The proposal instructions for subfactor 2c instructed offerors to provide a summary QC plan which would later be incorporated into a formal QC plan. Specifically, the RFP stated that the "summary plan should be broad enough to address all aspects of quality control to include responsibility for surveillance of work, number of active projects assigned to each quality control technician, acceptance, rejection, documentation, trend analysis and corrective action, and interface with Government inspectors." The agency rated the protester's QC plan as marginal requiring moderate revision because it failed to discuss trend analysis and the number of delivery orders per inspector and did not adequately discuss government interface

except to say that daily logs would be provided to the contracting officer's representative.

Trataros does not dispute the specific findings. Rather, the protester asserts that all that was required was a "summary" plan and that its plan was sufficient. Trataros also states that it was precluded from providing any more detail because of the 75-page limitation on the length of technical proposals. The protester's reading of the word "summary," however, ignores the detailed description of what was required, and since it does not dispute the evaluation findings, we have no basis to question the evaluation. Moreover, as other offerors were able to submit adequate proposals within the RFP's page limitation, we are unpersuaded that the protester was hindered by that limitation. See Telemechanics, Inc., B-229748, Mar. 24, 1988, 88-1 CPD ¶ 304.

The proposal instructions for subfactor 3c required offerors to "provide specific identification of proposed key subcontractors and suppliers for each major function/discipline in accordance with R.S. MEANS. Provide a brief resume of each . . . including experience. . . ." The agency rated Trataros's proposal as unacceptable for this subfactor, with major revisions required, because Trataros did not identify the subcontractors' and suppliers' functions and did not describe their experience. Trataros states that it did not include experience in its proposal because of the page limitation and argues that the firms' functions should be evident from their trade names. Thus, all the record reflects is the protester's disagreement with the evaluators and a misplaced reliance on the page limitation rather than any impropriety in the evaluation.

Under the Project Execution and Technical Capability factor (Factor 4), offerors were to submit, inter alia, one or more design concepts, a list of assumptions used to develop those design concepts, a list of priced items, simple design drawings, material submittals, an estimated time frame necessary to start and finish the demonstration project, and an overall proposal of project execution. Under subfactors 4b and 4c Trataros's proposal was rated unacceptable and in need of major revision because it failed to provide any mathematical support for its proposed solution, failed to list assumptions and failed to identify alternative solutions. Trataros concedes that it failed to list assumptions and again refers to the RFP page limitation; Trataros does not comment on the other findings. Again, we see no basis to disturb the evaluation.

The RFP instructions regarding cost proposals required offerors to provide detailed financial information in support of proposed cost coefficients including, mobilization and demobilization expenses, bond premiums and a proportional share of home office overhead. The agency found the cost proposal submitted by the protester to be unacceptable for a failure to provide the above-listed information. Trataros does not address these specific findings and merely asserts that it has

supplied adequate cost information to the Air Force which, again, provides no basis to disturb the evaluation.

As the foregoing examples reflect, the Air Force had a reasonable basis for excluding Trataros's proposal from the competitive range on the grounds that it received unacceptable ratings for a majority of the listed evaluation subfactors and required major revision to become acceptable. Trataros argues that the Air Force should have, nonetheless, kept the proposal in the competitive range in view of its "fair and reasonable price." This contention is misplaced since an agency may properly exclude a technically unacceptable proposal from the competitive range irrespective of the price offered. Systems Planning & Analysis, Inc., B-261857.2, Nov. 9, 1995, 95-2 CPD ¶ 218.

The protest is denied.

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