



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Clean Service Company, Inc.

File: B-281141.3

Date: February 16, 1999

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for the agency.

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Counsel, GAO, participated in the preparation of the decision.

DIGEST

Exclusion of a proposal from the competitive range is proper based on significant informational deficiencies, even where the deficiencies stem from removal of portions of the protester's proposal in excess of a page limitation stated in the solicitation; an offeror who submits a proposal in excess of page limitations risks exclusion of its proposal from the competitive range if it cannot establish the acceptability of its approach within those limitations.

DECISION

Clean Service Company, Inc. protests the award of a contract to Action Service Company under request for proposals (RFP) No. DAKF57-98-R-0004, issued by the Department of the Army for cooking waste removal at Fort Lewis, Washington. Clean Service argues that the agency improperly evaluated its proposal, by ignoring all pages in excess of a page limitation established by the RFP.

We deny the protest.

On June 22, 1998, the agency issued the RFP for a fixed price contract for a 1-year base period, with three 1-year option periods for cleaning, disposal, and removal of waste cooking grease, grease trap, and oil/water separator and dewater digester sludge at Fort Lewis, Wash. The RFP § M.1.1.1 advised offerors that evaluators would use the criteria of section L to determine the merit of proposals; § M.2.1 advised offerors that the agency intended to make award to the best overall proposal, considering three factors, as follows: technical (quality); past performance; and price. Technical (quality) included three subfactors, as follows: equipment and management work plan that complied with the work requirement (including a requirement for a safety and health plan, (SHP)); specialized

experience; and quality control plan. RFP § M.2.3. Technical (quality) and past performance would be more important than price in the agency's selection decision.¹

Section L.14, the instructions for preparing proposals, indicated that, apart from the cover sheet, technical proposals should contain no reference to the offeror's name and should use generic terms such as "our company" and "our office," etc. It required the submission of five copies, each numbered for control purposes, in three parts. Part I would be the executed RFP, including the representations and certifications; part II would contain price information, entered in section B of the RFP. RFP §§ L.14.3, L.14.4. Section L.14.5 stated as follows:

Part III: Technical Proposal. The offeror shall submit a technical proposal that completely addresses all evaluation areas, specifically identifying how each proposed contractual requirement shall be satisfied. The technical proposal shall include: an Equipment and Management Work Plan; Specialized Experience; and a Quality Control Plan. Limit pages to a maximum of ten printed front and back (20 printed pages). The total shall include all attachments

The agency received and referred to evaluators three proposals, which came from the protester, from the eventual awardee, and from a third firm, Calixto. As a result of the evaluation, the agency rated the protester's proposal as excellent, with 406 of a possible 500 points; Calixto's proposal as satisfactory (374 points); and Action's proposal as susceptible of being made acceptable (336 points).² Evaluators noted "[a] very thorough safety plan" as a strength of the protester's proposal. Contract Review Board Memorandum at 7.

Although Action had offered a lower price, the agency selected the protester for award based on its technical score (highest) and price (second low). Action filed a

¹Section M.2.3 indicated that within the factor of technical (quality), the equipment and management work plan would be of slightly more importance, with the subfactors of specialized experience and quality control plan of equal importance. Section C.1.4.3 set forth the required elements of the management plan, including an SHP (§ C.1.4.3.1.12). Under the evaluation plan, the equipment and management work plan was potentially worth 200 of 500 total points that could be earned for technical (quality) in the evaluation, with specialized experience and the quality control plan potentially worth 150 points each.

²The language "susceptible of being made acceptable" reflects the standard for establishing competitive range that existed prior to the rewrite of Federal Acquisition Regulation (FAR) Part 15. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5.

size status protest, which was denied, and a protest with the agency; in responding to the protest, agency counsel noted that Clean Service's technical proposal, at 38 pages, was almost double the allowed length of 20 pages. Evaluators then reevaluated the protester's proposal, considering only the first 20 pages permitted by the solicitation. Evaluators found that the excess pages, eliminated from consideration, contained information necessary to demonstrate the acceptability of Clean Service's proposal, including all information on the quality control subfactor. As a result, evaluators reduced the protester's technical score by a total of 233 points, down to a total of 173 points.³

Based on this reevaluation, the agency found Clean Service's proposal technically unacceptable and, by letter of October 15, eliminated it from the competitive range. Since the agency considered Calixto's price unreasonable (substantially higher than the prices of the other two competitors), it entered into discussions with Action, which had submitted the only reasonably priced proposal that could be made acceptable without being rewritten. The agency subsequently awarded a contract to Action and provided a debriefing to the protester on October 27. Clean Service filed a protest with the agency and, after the agency denied that protest on October 28, with our Office.

The protester points out that the deficiencies in its proposal result entirely from the elimination of the last 18 pages of its proposal. In this respect, the protester contends that, if evaluators removed its 20-page SHP, behind page 3, from its proposal, these deficiencies would disappear. It characterizes the submission of the SHP as a "clerical error" and argues that the SHP was clearly labeled an "attachment," as permitted by RFP § L.14.5 and that counting the pages of such attachments as part of the permitted 20 pages is unreasonable and inconsistent with the requirements, purpose, and intent of the page limitation in the RFP.

Contrary to the protester's argument, we find that RFP § L.14.5 quoted above could not be clearer in warning offerors that the 20-page limit would include attachments. Our standard for reviewing the evaluation of proposals and the determination whether to exclude a proposal from the competitive range is based on reasonableness and consistency with the criteria and language of the solicitation. WP Photographic Servs., B-278897.4, May 12, 1998, 98-1 CPD ¶ 151 at 3. Where, as here, an offeror chooses to disregard page limitations, or is otherwise unable to demonstrate the merit of its proposal within the established limits, it assumes the risk that the agency will exclude the proposal from the competitive range, and it is not entitled to a further opportunity to expand or correct its proposal through

³For the subfactor of equipment and management work plan, the protester's score decreased from 160 to 63 points; for specialized experience, it decreased by 29 points, from 139 points down to 110 points; for the quality control plan the protester's score was zero, down from 107 points.

discussions. Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58 at 4-5. The agency's determination to reevaluate the proposal, without the excess pages, was both reasonable and consistent with the RFP.

We note here that the record shows that inclusion of the SHP with the proposal was more than a "clerical error." The protester's letter of protest to the agency and its letter of protest to our Office view "attachments" as separate from the proposal and imply that the protester viewed the use of "attachments" as a means of avoiding the solicitation's page restrictions. Protester Letter of October 26, 1998 (agency-level protest) at 2; Protest at 3. The SHP was clearly prepared for the proposal, using the term "the company" rather than any specific reference to Clean Service; as the agency pointed out in denying the protest, its location in the proposal was consistent with the format used by the protester, a paragraph by paragraph response to the statement of work. The excess pages resulted in a perceived strength in the initial evaluation, as noted above. Contrary to the protester's implication, there is no ambiguity in the RFP instruction, which as noted above, states that the agency will include attachments in the 20-page limitation. From the record, it appears that the Source Selection Evaluation Plan, provided to evaluators, made no reference to the page limit; in any event, less than a week passed after the filing of Action's protest before the agency realized its error and determined to take corrective action in response to that protest. Since the SHP was a required part of the technical proposal, the protester's contention that eliminating the SHP from its proposal would have cured other deficiencies in that proposal is incorrect. The absence of the SHP from Clean Service's proposal would have been a material omission. We are unable to conclude that the agency's refusal to take on the burden of editing the proposal to bring it within page limitations was either unreasonable or inconsistent with the RFP. See All Star Maintenance, Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294 at 3 (A primary purpose of page limitations is to save the time of evaluators, as well to save expense for offerors).

Finally, the FAR Part 15 rewrite provides 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." FAR § 15.306(c)(1); see SDS Petroleum Prods., Inc., supra. We have concluded that the Part 15 rewrite does not require that agencies retain a proposal in the competitive range simply to avoid a competitive range of one; conducting discussions and requesting best and final offers from offerors with no reasonable chance of award would benefit neither the offerors nor the government. Id. at 6; see also 62 Fed. Reg. 51,224, 51,226 (1997) (retaining marginal offers in competitive range imposes additional and largely futile effort and cost on government and industry).

Here, based on the reevaluation, the agency decided to limit discussions to Action because Calixto's price was determined unreasonably high and Clean Service's proposal, based on the first 20 pages allowed by the solicitation, was technically unacceptable, rated low under the rating scheme and would require a major rewrite

to correct. Thus, in our view, Action's proposal was reasonably considered the only one with a reasonable chance for award. While the agency could have chosen to amend the RFP to eliminate the page limit and reopen the competition, or under the circumstances here, to hold discussions with Clean Service, it was not required to do either. We think that, once the agency realized, during the course of Action's protest, that Clean Service's proposal substantially exceeded the RFP's page limit, the agency's decision to hold discussions with Action alone was reasonable and well within the broad discretion afforded to an agency in taking corrective action to ensure a fair and impartial competition. See Main Bldg. Maintenance, Inc., B-279191.3, Aug. 5, 1998, 98-2 CPD ¶ 47 at 3; FAR § 15.306(c).

The protest is denied.

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