

144242

P. Petrovito



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Beneco Enterprises, Inc.
File: B-243000
Date: June 24, 1991

Patrick S. Hendrickson, Esq., Howell, Fetzner & Hendrickson, for the protester.
Maj. Richard B. Robison and Capt. K. Lisa Guillory, Department of the Air Force, for the agency.
Guy R. Petrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated, indefinite quantity procurement for construction, maintenance, and repair services, the procuring agency reasonably evaluated the protester's proposal as technically unacceptable and properly eliminated it from the revised competitive range after discussions, where the protester's model project submissions, which were evaluated under a specific evaluation criterion, failed to demonstrate the protester's understanding of the solicitation requirements or the protester's ability to use the required unit price book to price contract services.

DECISION

Beneco Enterprises, Inc. protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. F08651-90-R-0004, issued by the Department of the Air Force, for the simplified acquisition of base engineering requirements (SABER) at Eglin Air Force Base (AFB), Florida.

We dismiss the protest in part and deny it in part.

The RFP, issued as a total set-aside for small disadvantaged businesses, contemplated the award of a fixed-price, indefinite quantity contract for minor construction and small and medium-sized maintenance and repair projects at Eglin AFB for a base year and 3 option years. Tasks under the RFP

included carpentry, road repair, roofing, excavation, interior electrical services, steam fitting, plumbing, sheet metal, painting, demolition, concrete masonry, and welding. The RFP included detailed task specifications. A minimum of \$300,000 was required to be ordered each year and a maximum of \$10,000,000 could be ordered for the base year.1/

The RFP included a unit price book (UPB), containing price information (i.e., a government estimate) for a large variety of work items in specified units of measure.2/ The RFP required offerors to provide percentage factors for standard and non-standard^{3/} working hours to accomplish the RFP work, and informed offerors that the actual cost of contract work would be determined by multiplying the UPB unit price by the appropriate percentage coefficient.

Offerors were informed that award would be made to the responsible offeror, whose offer was the most advantageous to the government, based upon an integrated assessment of the evaluation criteria. Technical criteria were more important than cost/price. The technical evaluation factors were stated in descending order of importance as follows:

- (1) Project Management Ability
- (2) Subcontracting Support Capability
- (3) Project Execution

Subfactors were provided for each evaluation factor. Each criterion was to be assessed for compliance with the solicitation requirements, soundness of approach, and understanding the problem.

Offerors were instructed in section L of the RFP as to the required format and content of technical proposals relative to each of the evaluation factors and subfactors. For the "project execution" criterion, offerors were informed that

1/ Specified larger amounts of work could be ordered in the option years.

2/ The UPB prices include the costs of material, delivery, equipment, and labor. The RFP provided that work items that were not pre-priced in the UPB would be negotiated during the contract. The stated contract goal was that over 90 percent of the work items would be pre-priced listings from the UPB.

3/ The RFP estimated that less than 5 percent of the maximum dollar amount of the contract would be accomplished on a non-standard basis.

attached to the RFP was a sample work order for the construction of a pre-engineered metal building and that offerors were required to submit all necessary drawings, documents and cost estimates for the execution of this model project. The RFP provided that the model projects would be evaluated for (1) technical approach to meeting the RFP requirements, specifications and statement of work; (2) use of the UPB (i.e., the use of pre-priced listings vis-a-vis non-pre-priced listings); and (3) cost effectiveness decisions.

Of the 10 proposals received by the Air Force, 7 proposals, including Beneco's, were found to be in the initial competitive range. Written discussions were conducted with each of the competitive range offerors. Beneco received eight clarification requests (CR) and eight deficiency reports (DR) and was provided with the opportunity to revise its proposal. The Air Force determined, after its evaluation of Beneco's responses to the agency's CRs and DRs, that Beneco had not demonstrated an understanding of the solicitation requirements or a familiarity with the UPB. Accordingly, Beneco's proposal was determined to be technically unacceptable and was eliminated from the revised competitive range. This protest followed. Best and final offers have been received from the six remaining offerors but no award has been made.

Beneco protests that the agency's determination that its proposal was technically unacceptable and its consequent elimination from the revised competitive range was unreasonable. Specifically, the protester contends that the agency's evaluation of Beneco's model project was unreasonable because (1) the evaluation of the model project was not a specific evaluation criterion and was given too much weight in the evaluation in any case; (2) the model project was not an accurate test of SABER understanding and the RFP failed to provide sufficient information for the model project to allow "a prudent, knowledgeable SABER contractor" to provide a complete offer; and (3) the problems identified by the agency regarding Beneco's model project are illusory and undocumented.

First, Beneco is not correct that the RFP did not provide for the evaluation of offerors' model projects under a specific evaluation criterion. The RFP, as noted above, specifically identified "project execution" as a technical evaluation factor, and informed offerors in section L that the agency, under "project execution," would evaluate offerors' model project submissions for technical conformity and approach, completeness of pricing, and cost effectiveness. Thus, we fail to see how Beneco could not know that its model project

would be considered by the Air Force in the technical evaluation.

Beneco's contentions that the RFP provided insufficient model project information to allow offerors to submit complete offers and that the model project is not an accurate representation of how SABER procedures actually operate concern apparent solicitation improprieties that Beneco was required to protest prior to the closing date for receipt of proposals.^{4/} See 4 C.F.R. § 21.2(a)(1) (1991). Accordingly, its protest on these grounds, first raised in Beneco's comments on the agency's report, is dismissed as untimely.

In reviewing Beneco's protest of the agency's technical evaluation and decision to eliminate an offeror from the competitive range, we will not evaluate the proposal anew, but instead will examine the agency's evaluation to ensure that it was reasonable and in accord with the evaluation criteria listed in the solicitation. Abt Assoc., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. We will review the documentation supporting the evaluation decision to determine whether the decision was adequately supported and rationally related to the evaluation factors as required by Federal Acquisition Regulation (FAR) § 15.612(d)(2). Programmatic, Inc.; Telesynetics Corp., B-228916.2; B-228916 3, Jan. 14, 1988, 88-1 CPD ¶ 35.

From our review of the record, we find that the agency's evaluation of Beneco's proposal was adequately documented, reasonable, and in accordance with the RFP evaluation criteria. The record consists of the agency's summary evaluation of offerors' proposals, written CRs and DRs identifying proposal deficiencies, Beneco's written responses to the CRs and DRs, the agency's evaluation of Beneco's revised proposal, and the contracting officer's revised competitive range determination. The record indicates all of the deficiencies that resulted in the agency's determination that Beneco's model project was unacceptable were fully disclosed to the protester in the written CRs and DRs. This record sufficiently documents the agency's evaluation decision to allow us to determine the rationality of the agency's technical judgments. See Hydraudyne Sys. and Eng'g B.V., B-241236; B-241236.2, Jan. 30, 1991, 91-1 CPD ¶ 88.

Beneco's contention that the model project was given too much weight in the evaluation, even though this was the factor that ultimately caused Beneco's otherwise marginal proposal to be rejected, is not supported by the record. That is, Beneco's

^{4/} Beneco never sought clarification of the model project requirements.

revised proposal, was rated only marginally acceptable under the "project management ability" and "subcontracting support capability" criteria, even after discussions, and since Beneco's model project was evaluated as unacceptable, Beneco was considered technically unacceptable overall with no real chance at award. This weighting of the evaluation criteria was in accord with the RFP.

Beneco also attacks the agency's evaluation of its model project. The Air Force found that Beneco in its model project, despite specific discussions from the agency, failed to demonstrate its understanding of SABER requirements and its ability to use the UPB to find pre-priced items. For example, the model project specified a pre-engineered metal building as a requirement and the UPB provided a pre-priced listing that would satisfy this requirement. Beneco, however, proposed to construct a metal building from component UPB line items. In response to the agency's DR concerning Beneco's approach, the protester stated that it had been unable to locate the pre-engineered building in the UPB. Beneco was similarly unable to find, as it admitted in discussions, numerous other pre-priced items in the UPB.5/

The Air Force also questioned several other aspects of Beneco's model project, including the firm's inclusion of work items that were not required. While Beneco in discussions informed the agency that these items were offered as "options" or "alternatives," these items were not identified as options or alternatives in its proposal. Also, Beneco's use of waste allowance percentages for rebar and asphalt was questioned, since the RFP restricted waste and excess quantities to specified building materials, not including rebar or asphalt. In response to the DRs on this matter, Beneco deleted the waste factor percentages for rebar and asphalt in its revised proposal with the statement that it had been the firm's practice to use these waste factor percentages under its other SABER contracts.6/

5/ Beneco argues that the agency failed to identify during the protest which items were not pre-priced. The record indicates that all of these items were specifically identified in the written discussions provided to Beneco.

6/ The protester also objects that the RFP list of building materials to which a waste allowance can be applied was not intended to be inclusive. We disagree. The RFP unambiguously states that waste allowance "[f]actors shall be applied for the following building materials" and then lists specific materials. We think the plain meaning of this clause is that a waste or excess quantities allowance would not be permitted for materials not identified in the RFP.

Under the circumstances, the agency reasonably concluded that Beneco's model project and the firm's responses to the agency's discussion questions indicated a lack of understanding of the solicitation's requirements and familiarity with the UPB. Beneco's mere deletion of these items in response to the agency's discussion questions, while "correcting" the identified deficiency, does not demonstrate that Beneco understood the scope of work sought by the model project or could find the pre-priced listings in the UPB. In this regard, in assessing an offeror's response to a sample problem, an agency may properly give greater weight to the offeror's initial solution in judging its understanding. See Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258; Hill's Capitol Sec., Inc., B-233411, Mar. 15, 1989, 89-1 CPD ¶ 274. Given that Beneco's proposal was otherwise marginal, the Air Force reasonably eliminated Beneco's revised proposal from the competitive range as technically unacceptable based on its unacceptable model project. See John W. Gracey, B-228540, Feb. 26, 1988, 88-1 CPD ¶ 199 (an agency may reasonably downgrade an offeror who does not demonstrate the requisite understanding of solicitation requirements in its proposal and exclude that proposal from the competitive range).

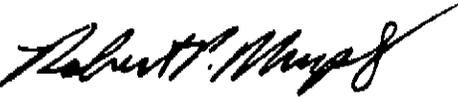
Beneco argues that the agency's exclusion of its proposal from the revised competitive range was not made in accordance with the Air Force's Formal Source Selection for Major Acquisition Regulations § 3-11. Specifically, Beneco complains that its proposal should not have been excluded from the competitive range absent a showing that its proposal contained a "substantial technical drawback" that could not be corrected without a major rewrite of its proposal.

This section, which is in appendix AA to Air Force Regulation 70-15, is not applicable to this procurement, since this is not a major acquisition. Moreover, this regulation is an internal instruction to aid agency personnel and does not itself provide outside parties with any legal rights. See Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326. Where, as here, a proposal that was initially included in the competitive range is found after discussions to have no reasonable chance for award, the proposal may properly be excluded from the competitive range. FAR § 15.609(b).

Finally, Beneco complains that some of the CRs it received from the agency should have been identified as DRs. However, Beneco does not explain how, even assuming that this is true, the protester was prejudiced thereby. In any event, the identification of a discussion question as a CR rather than a DR does not in itself provide any basis for protest, in the

absence of a showing that meaningful discussions were not conducted. See Advance Sys. Tech., Inc., Eng'g and Prof. Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel