



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Areawide Services, Limited

File: B-265650.2

Date: December 28, 1995

Wanda M. Johnson, Esq., and John T. Henderson, Esq., Craig, Harris, Henderson & Johnson, for the protester.

Valerie L. Veatch, The Kennedy Center for the Performing Arts, for the agency. Wm. David Hasfurther, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Exclusion of the protester's proposal from the competitive range was reasonable where the proposal failed to show the protester's ability to develop and write operations manuals; where, based on the protester's performance on previous contracts, agency officials had reasonable concerns about the firm's ability to perform; and where information developed during proposal evaluation showed that the protester might not comply with personnel testing requirements.

DECISION

Areawide Services, Limited protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. IBKC-95-002, issued by The Kennedy Center for the Performing Arts for uniformed security guard services.

We deny the protest.

The RFP required the submission of technical and price proposals to provide a force of security officers, including supervisors and a project manager, to provide guard services 24 hours a day, 7 days a week for a base year with 4 option years. The RFP contained five evaluation factors: (1) corporate organization/structure (including as subfactors management/ supervision; prior experience), (2) recruitment of personnel (training, professionalism, background investigation, and screening), (3) quality control, (4) resources for additional personnel and services, and (5) transition plan (orientation; daily operations). Price was to be separately evaluated but not scored and was less important than the technical factors.

Three proposals were included in the competitive range; five others (including Areawide's) were rejected as technically unacceptable. Generally, Areawide's proposal was rejected because it did not address, or contained inadequate

responses to, various RFP requirements. For instance, the Center was unable to evaluate Areawide's claimed experience in developing and writing operations manuals since that portion of its proposal was merely a verbatim copy of the Center's current operations manual. Also, the Center concluded that Areawide's use of only one person, who was to have additional duties, to handle quality control was inadequate. Areawide's performance on other contracts also was viewed as marginal with respect to planning and effecting quality control. The recruiting, screening, and testing procedures set out in the proposal were considered vague, and the proposal contained no transition plan other than to state that, as the incumbent, Areawide would continue to perform as usual, notwithstanding that this procurement included increased requirements and an increased level of performance which, in the agency's view, made the development of a transition plan essential.

Finally, a site visit by the evaluators to Areawide's corporate office (the Center states that its evaluators made similar site visits to each offeror) raised questions concerning the validity of portions of Areawide's proposal. For instance, while the proposal stated that the required 24-hour command post would be located in Areawide's corporate office, the Areawide employees indicated that a daytime post existed in the corporate office, but after-hours and on weekends that post shifted to a location at which Areawide was performing another contract. Also, although the proposal stated that three tests required by the RFP to determine the qualifications of potential security officers had been passed by Areawide's security officers, during the site visit the evaluators were told by Areawide's Director of Personnel that the testing had not been, and was not being, administered.

Areawide rejects the Center's reasoning, contending first that the RFP did not require a single 24-hour command post and that even the use of two command posts—one for daytime and another for after-hours and weekends—would meet the RFP requirement. As to the three personnel tests specified by the RFP, Areawide, while maintaining that its employees did not advise the Center that the tests were not being used, states that the RFP, which required the tests to be administered to officers "within one year prior to being assigned to a security officer position," thus did not require that the tests be administered prior to award. Also, according to Areawide, since the RFP did not preclude an offeror from proposing only one person—who might also be handling other functions—to handle quality control, the Center improperly downgraded this portion of Areawide's proposal. Areawide also objects to the agency's use of negative information relating to Areawide's performance on other contracts, since it was never given the opportunity to rebut or explain this information. As to the transition plan, Areawide contends that such a submission was not required and that the RFP (provision C.12.2.2) only required the contractor to submit a "Post Award Implementation Plan" within 10 days after contract award.

Areawide also states that nothing in the RFP permits a site visit for proposal evaluation purposes. Areawide argues that since offerors must be advised of the criteria upon which proposals will be evaluated and since proposal evaluation based upon criteria that were not disclosed to the offerors is improper, the Center's evaluation of Areawide's proposal based on the results of a site visit must be rejected. Additionally, Areawide objects to the Center's reliance on information that it allegedly obtained from Areawide's employees since those employees deny having supplied this information. Areawide also argues that the employees had insufficient knowledge of Areawide's proposal to discuss it and the use of such information is indicative of the bias held by the Center personnel against Areawide. Areawide maintains that it was treated in a discriminatory manner while performing the previous contract because the Center's Director of Security had wanted another firm to perform that contract. Areawide notes that the Director of Security was appointed as the source selection authority for this procurement and another person involved with the previous contract was on the evaluation panel.

Generally, the evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accord with stated evaluation criteria and not in violation of procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203.

We believe the Center's rejection of Areawide's proposal was reasonable in view of the doubts raised in the proposal about Areawide's ability to develop and write operations manuals, and its intention to utilize officers who had passed the required tests, as well as the problems encountered during Areawide's performance of prior contracts .

In its proposal, in order to demonstrate its capability and experience in developing, writing, and updating procedural operations manuals, Areawide provided a "Sample Procedural Manual" which consisted of 8.5 proposal pages which simply repeated verbatim (except for minor deletions) pages from the Center's manual, "Policies, Procedures and Responsibilities, " dealing with the project manager, shift supervisors, the operations center, and patrol requirements for the Center. Areawide maintains that it has a right to use the Center's manual because it was provided to Areawide when it began performing the previous contract. Nonetheless, we agree with the Center that Areawide did not establish its own capability and experience in this area by simply repeating the Center's existing manual.

As for prior experience, the RFP required offerors to submit information regarding experience performing similar security work as well as three references. Based upon reports from these references, the Center reasonably concluded that as to planning and effecting quality control Areawide's performance under the RFP would be marginal. Despite Areawide's contentions that the Center could not utilize this information as it did, the Center was free to evaluate what it learned from these sources without having to discuss that information with Areawide and without investigating the accuracy of the information. See SDA Inc., B-256075; B-256206, May 2, 1994, 94-2 CPD ¶ 71.

Finally, although Areawide stated in its proposal that the three RFP-required tests had been administered to and passed by its proposed security officers, we believe the Center could reasonably have doubts about this aspect of the proposal. While Areawide disputes the Center's assertion that Areawide's Director of Personnel stated during the site visit that the tests had not been, and would not be, administered to Areawide employees, during a debriefing Areawide's president admitted that the tests had not been administered because his attorney advised him "that there might be a discrimination problem with the tests." Given that admission and in light of the fact that some of the proposed personnel were already employed by Areawide as security officers under the incumbent Kennedy Center contract, it could reasonably appear to the Center that Areawide, despite the statement in its proposal, would not commence contract performance with security officers who had taken and passed the required testing.¹

Areawide also raises the possibility of bias on the part of the Center personnel involved on this procurement. According to Areawide, its performance was criticized under the incumbent contract because many of its employees, including its project manager, are African-American and the Center's Director of Security preferred that the contract be staffed with retired Secret Service officers, who are generally caucasian.

A protester must produce credible evidence showing bias, not mere inference or supposition, and must demonstrate that the agency bias translated into action which unfairly affected the protester's competitive position on the procurement in question. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171. Here, Areawide's allegation of bias is based upon its speculation concerning the reasons why its performance was criticized under the prior contract. In any event, nothing in the record shows that this alleged bias affected the evaluation of Areawide's proposal. On the basis of our above discussion of the inadequacies in

¹Areawide's argument notwithstanding, the RFP clearly envisions that security officers, at the time they begin performance, will have passed the tests within the preceding 1-year period.

Areawide's proposal, we can only conclude that the exclusion of Areawide's proposal from the competitive range was reasonably based and not the result of bias.

The protest is denied.

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