



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release..

Matter of: DuVALL Services Company

File: B-265698.2

Date: February 7, 1996

Richard L. Moorhouse, Esq., and Craig A. Holman, Esq., Holland & Knight, for the protester.

Mike Colvin, Department of Health & Human Services, for the agency.

Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency's determination to exclude protester's low-rated proposal from a revised competitive range was reasonable where protester, which proposed a higher price than the proposed awardee at the time of its exclusion, only offered staffing amounting to approximately [deleted] of the staffing offered by the proposed awardee even after contracting agency sent the protester a discussion item questioning the adequacy of its staffing.

DECISION

DuVALL Services Company (DSC) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 263-95-P(BB)-0109, issued by the National Institutes of Health, for maintenance and repair services for government-owned Dupont/Sorvall scientific instruments.

We deny the protest.

The requirement was for on-site full service maintenance, including preventive maintenance, inspection, and emergency repair of the scientific instruments located at Bethesda, Maryland, and Research Triangle Park, North Carolina.¹ The RFP was issued on February 24, 1995, and contemplated the award of a fixed-price requirements contract for one year with four 1-year options at the Bethesda site. The RFP required emergency repairs to be completed within 48 hours. Technical

¹Under the terms of the RFP, offerors could submit proposal for one or both sites. [Deleted].

proposals were required to be evaluated based on the following criteria: (1) qualification of service personnel (30 of 100 possible points);² (2) the organization's qualifications (25 points); emergency response (25 points); and availability of spare parts (20 points). The RFP stated that evaluation of technical proposals would be of "paramount consideration" in the award decision and that price would become significant only in the event that two or more offerors were rated approximately equal technically.

Four proposals, including the proposals of DSC and E.I. Dupont de Nemours Co., Inc., were received by the May 2, 1995, closing date. On May 25, initial proposals were evaluated by the agency's technical evaluation panel (TEP), which submitted a report on May 30 setting forth the strengths and weaknesses of each proposal. The TEP rated Dupont acceptable; DSC and another firm were rated marginally acceptable, and the remaining offeror was rated unacceptable. On June 9, the agency established a competitive range of three offers consisting of the acceptable and marginally acceptable offers. The protester's proposal was higher priced than Dupont's proposal [deleted].³ In making her competitive range determination, the contracting officer stated as follows concerning DSC's initial technical proposal:

"[Deleted] technicians resumes were provided with [deleted] specific evidence of training with Dupont/Sorvall equipment. [This offeror] appears to have missed or ignored the size and scope of the instruments to be maintained. [The firm] propose[s] to have [deleted] available . . . [and appears] to be contesting the intent and content of the RFP. . . . There is no tangible plan or evidence cited that a 48 hour repair time will be met if multiple failures occur in parallel with [deleted] technicians available."⁴

As a result, the contracting officer sent the protester the following discussion question:

²This evaluation criterion (qualification of service personnel) required "evidence" of the "necessary qualified skill[s]" of service technicians, including the submission of "three (3) to four (4) names of individuals actually to be assigned to service the instruments [specified] together with a resume of their experience and educational backgrounds."

³The protester proposed a price of [deleted]; Dupont proposed a price of [deleted].

⁴In contrast, Dupont proposed [deleted] technicians and also provided in its proposal a very specific methodology for [deleted].

"Do you believe that [deleted] is enough to perform the requirements as stated in the RFP?"

The agency received revised technical responses from the offerors to the discussion questions on June 16. Revised prices were not solicited or received.

In its revised technical proposal, the protester stated

"[y]es, we do believe that [deleted] is enough to perform the requirements. . . . By this we mean that [deleted] would be assigned . . . to handle emergency service calls and preventive maintenance visits and [deleted] will be assigned to assist with emergency service and preventive maintenance as required."

The protester further stated that [deleted] would be required only to support both sites solicited by the RFP but that it was "bidding" on only the Bethesda location. The protester then proceeded to explain that the average number of emergency repair requests previously at the Bethesda location was three per day; that the average repair time was 1.5 hours per call; and that the average preventive maintenance visit took 1 hour to complete. The protester concluded

"From this [data] we can deduce that it will take 22.5 man hours per week for emergency service. This leaves 17.5 man hours per week for preventive maintenance. Based on a 48 week work year one man could also perform 840 preventive maintenance visits per year."⁵

The TEP reconvened on July 12 to evaluate the revised technical submissions. Dupont received a technical score of [deleted]; the protester received a score of [deleted]. On July 26, the contracting officer made a revised competitive range determination in which she excluded the protester's proposal from the competition.

⁵In its comments on the agency report, the protester argues that the agency's discussion question was inadequate and misleading. However, simply from our reading of the protester's technical response to the discussion question, we find that the protester was reasonably advised of this area of concern (lack of adequate staffing) by the agency. As the protester concedes, "discussions need not be all-encompassing and should not become a 'spoon feeding' exercise." See Acumen Eng'g/Analysis, Inc., B-260102, May 11, 1995, 95-1 CPD ¶ 240.

This revised competitive range determination resulted in only Dupont remaining in the competition for the Bethesda location.

The contracting officer eliminated the protester's proposal from the revised competitive range because she did not believe that [deleted] constituted adequate staffing, and because she believed that the protester's explanation and analysis of the requirements were "flawed as [the protester's submission] considers only average values over periods of time rather than the possibility for multiple failure events in succession requiring a greater level of service efforts over an acute period of time." She also again found that the protester had not submitted any "tangible plan or evidence" that it could meet the 48-hour repair time requirement. This protest followed.

In a negotiated procurement, the purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range is to be determined on the basis of cost or price and other factors that were stated in the solicitation and should include only proposals that have a reasonable chance of being selected for award. Id. Even a proposal that is technically acceptable as submitted need not be included in the competitive range when, relative to other acceptable offers, it is determined to have no reasonable chance of being selected for award. Wordpro, Inc., B-242100.2, Apr. 24, 1991, 91-1 CPD ¶ 404; see Hummer Assocs., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. This "relative" approach to determining the competitive range, that is, comparing one offeror's proposal to those of other offerors, may be used even where it results in a competitive range of one. Everpure, Inc., supra; Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114.

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. Advanced Sys. Technology, Inc.; Engineering and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. Hence, it is not the function of our Office to evaluate proposals de novo, and while we closely scrutinize an agency decision which results, as in this case, in a competitive range of one, we will not disturb that determination absent a clear showing that it was unreasonable or in violation of procurement laws or regulations. Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273. If the agency's evaluation of proposals is reasonable, and not violative of law or regulation, there is nothing improper in the agency's making more than one competitive range determination and dropping a firm from further consideration. Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244.

We think the agency here properly excluded the protester's revised proposal from the competitive range because it did not have a reasonable chance for award. First, upon being questioned by the agency about the adequacy of its staffing, DSC merely offered an analysis of certain historical data to demonstrate the need for [deleted] that consisted entirely of "average" usage and experience over long periods of time rather than the possibility of multiple failures in succession requiring acute levels of service.⁶ We find reasonable the agency's determination that this analysis of work load by the protester, based solely on "averages" over a long period of time, was meaningless for ascertaining a firm's capabilities for responding to surge requirements. Second, even if we find that the protester's proposal was not unacceptable on its face, the protester's continued insistence in its revised proposal to provide the agency with only one primary service technician with [deleted] (at a higher price than Dupont's) represented, as the agency reasonably found, a level of effort greatly inferior to Dupont's approach. In our view, the agency therefore reasonably concluded that the protester's inferior technical approach, along with its higher price, resulted in the firm not having a reasonable chance for award.

The protest is denied.

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⁶The protester argues that it submitted the resume [deleted]. The TEP had concerns regarding this individual [deleted]. In any event, the fact remains that the protester's substantive technical approach consisted of [deleted], while Dupont firmly proposed [deleted].