



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Resource Applications, Inc.

File: B-271079; B-271079.2

Date: May 20, 1996

Jacob B. Pompan, Esq., and Gerald H. Werfel, Esq., Pompan, Ruffner & Werfel, for the protester.

J. Michael Slocum, Esq., Slocum, Boddie & Murry, for RAO Enterprises, Inc. d/b/a/ Integrated Laboratory Systems, an intervenor.

Anthony G. Beyer, Esq., Environmental Protection Agency, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where contracting officer clearly based competitive range recommendation on the proposal evaluation performed by the technical evaluation panel, protest that contracting officer misrepresented to source selection official protester's ability to perform the contract is without merit.
2. Protester's proposal was properly eliminated from the competitive range where proposal was evaluated as having numerous serious deficiencies, such that it would have to be substantially rewritten to be considered for award, and protester fails to show that evaluation conclusions were unreasonable.

DECISION

Resource Applications, Inc. (RAI) protests the elimination of its proposal from the competitive range under request for proposals (RFP) No. D500055R1, issued by the Environmental Protection Agency (EPA) for performance of Environmental Service Assistance Team (ESAT) support services for various EPA programs.

We deny the protest.

The solicitation was issued on May 1, 1995, for ESAT support services for four separate geographical areas. This protest concerns region IV, which was set aside for small business concerns. Award was to be based on a best value analysis using the following evaluation factors (with relative weight, out of 1,000 points): management (300), personnel (300), technical (200), corporate experience (100), and sample situation scenarios (100). Technical merit was more important than cost in the award decision.

Two offerors, RAI and RAO, responded to the solicitation. The technical evaluation panel (TEP) assigned RAO's proposal 865 points, with ratings of superior for five subfactors, good for six, and adequate for one. The TEP found no major weaknesses in RAO's proposal and concluded that RAO was fully qualified to satisfy all requirements of the RFP. RAI's proposal was assigned 550 points, with ratings of good for four subfactors, adequate for four, and less than adequate for four. The TEP concluded that, based on the number of major weaknesses in its proposal, RAI would have great difficulty satisfying all solicitation requirements. After reviewing the TEP report and an evaluation of the offerors' proposed costs and business considerations, the contracting officer recommended to the source selection official (SSO) that only RAO's proposal be included in the competitive range. The SSO agreed and awarded the contract to RAO on January 31, 1996, following discussions and submission by RAO of a best and final offer (BAFO).

RAI challenges the award decision on numerous grounds. We find all of RAI's arguments to be without merit. We discuss several below.

CONTRACTING OFFICER'S RECOMMENDATION

RAI protests that, in recommending to the SSO that RAI's proposal be eliminated from the competitive range, the contracting officer misrepresented the TEP's conclusions regarding the proposal. Specifically, RAI states that, while the TEP report's conclusion that RAI would have difficulty performing was based "on the information submitted in [RAI's] proposal," the contracting officer's competitive range recommendation expressed this conclusion without indicating that it was based on the proposal information. RAI maintains that the contracting officer thereby falsely represented to the SSO that RAI would not be able to perform even if discussions were held and RAI modified its proposal.

This argument is clearly without merit. First, given that the proposal evaluation process is based on the information in the proposals, there simply is no reason to believe that the SSO might misunderstand that the contracting officer's competitive range recommendation was based on the proposal information; the premise of RAI's argument therefore is flawed. Moreover, RAI's argument is based on a selective reading of the contracting officer's competitive range recommendation. The sentence cited by RAI, in its entirety, reads as follows:

"The TEP found numerous major weaknesses in the proposal and indicated that RAI would be likely to have difficulty in satisfying all the requirements specified in the solicitation." (Underlining added.)

Further, the contracting officer stated in her recommendation summary that:

"[t]he deficiencies in RAI's initial proposal indicate that this firm does not appear to have sufficient understanding of the effort to perform successfully. The breadth of revisions required for RAI to become technically acceptable in the criteria where they scored less than 'adequate' would be tantamount to rewriting its proposal as detailed above. . . . Without a major rewrite, RAI's proposal cannot become technically competitive with that of ILS."

These statements and others in the competitive range determination clearly conveyed to the SSO that the contracting officer's recommendation was based on RAI's proposal, not on a belief that RAI would not be able to perform satisfactorily under any circumstances.

EPA ACQUISITION REGULATION

RAI maintains that the TEP improperly failed to evaluate the proposals in accordance with the EPA Acquisition Regulation (EPAAR), 48 C.F.R. § 1515.608(a)(1) (1995), which requires the TEP to rate each subfactor on a 5-point scale. RAI asserts that the regulation requires discussions where 2 points are assigned, and that since RAI's proposal received at least 2 points for each subfactor, the agency should have included RAI's proposal in the competitive range for discussion purposes.

Again, RAI's argument is based on a selective reading of the relevant language it cites. While EPAAR § 1515.608 does state that for a score of 2 points "[c]larification is required," the language RAI ignores states that "[f]inal scoring of the element will be made following limited discussions or full negotiations, if discussions or negotiations are held with the offeror." (Underlining added.) Thus, the regulation clearly does not require clarification/discussion of subfactors receiving a score of 2 unless discussions are otherwise held with the offeror. As RAI's proposal was excluded from the competitive range, and therefore was not included in discussions, clarification of its proposal was not required.

EVALUATION OF RAI'S PROPOSAL

RAI protests that its proposal should not have been eliminated from the competitive range because the weaknesses cited by the contracting officer either did not exist or could have been corrected during discussions.

In reviewing challenges to an agency's competitive range determination, we will not independently reevaluate the proposal; rather, we will examine the evaluation to determine whether it was reasonable and consistent with the RFP's evaluation

scheme. International Resources Corp., B-259992, Apr. 14, 1995, 95-1 CPD ¶ 200. Agencies properly may eliminate a proposal from the competitive range where, in order to be acceptable, the proposal would have to be revised to such an extent that it would be tantamount to submission of a new proposal. Systems Planning and Analysis, Inc., B-261857.2, Nov. 9, 1995, 95-2 CPD ¶ 218.

RAI's proposal was eliminated from the competitive range based on serious perceived deficiencies under the management, personnel, and technical factors. We find that the evaluation conclusions are reasonable, and that the number and extent of the weaknesses warranted eliminating RAI's proposal from the competitive range. We discuss some of the deficiencies below.

Management Factor

The management factor was comprised of two subfactors, under both of which RAI's proposal was found to be deficient. Under the first subfactor, management plan, the TEP evaluated two areas, contract mobilization/start up plan and management structure. In her competitive range recommendation, the contracting officer noted that while the TEP rated RAI overall adequate in each of these areas, it also listed a number of weaknesses in each area. With respect to mobilization/start up plan, RAI's proposal was predicated on a 60-day period of time between the contract award date and the start up date for performance, during which RAI would obtain office space--the proposal did not identify office space leasing arrangements--and hire 12 new employees and relocate 2; the proposal indicated that RAI would consider hiring incumbent staff, but presented no definite plans to obtain the necessary personnel. The contracting officer therefore was concerned that, despite its proposal to do so, RAI would be unable to have at least 80 percent of its staff in place within 30 days after the effective date of the contract, and 100 percent in place within 45 days after the effective date, as required by the RFP. With respect to the management structure area, the contracting officer noted that RAI's proposal failed to identify the chain of command between RAI and the proposed subcontractor, and did not otherwise provide details concerning the relationship between RAI and the subcontractor, despite instructions in the RFP to do so. In addition, RAI failed to specify leaders for five of six proposed work groups.

RAI argues that the contracting officer improperly ignored the TEP's findings that its proposal was adequate in these areas. RAI believes the contracting officer's concerns in the mobilization/start up plan area were unwarranted in light of its proposal to mobilize all personnel the day after the contract start up date and to be fully operational 30 days later. Likewise, with respect to the management structure area, RAI maintains that it provided clear-cut management policies and procedures, as well as a clearly defined management structure at the team level, and that it clearly outlined the authorities and responsibilities at the team level.

The evaluation was reasonable. First, contrary to RAI's assertion, the contracting officer did not ignore the findings of the TEP regarding RAI's proposal in these two areas; she specifically recognized that the TEP rated RAI's proposal adequate in these areas. However, she also considered the specific findings of the TEP regarding RAI's proposal, and the weaknesses the contracting officer found were the same weaknesses the TEP identified. Moreover, regarding the specifics of the evaluation, RAI's mere assertion that the agency should have found its rapid mobilization proposal sufficient totally ignores the contracting officer's concern in this area—that RAI would not be able to mobilize promptly because of the absence from the proposal of detailed hiring and office leasing plans. Similarly, with respect to the management structure area, while RAI points to some of the positive points in its proposal, it does not dispute the TEP's and contracting officer's findings that it did not provide the details of its subcontractor arrangement as requested by the solicitation. The agency's concerns clearly were encompassed by the evaluation areas in question, and are reasonable on their face. As RAI has not shown otherwise, there is no basis to object to the evaluation in this area.

Personnel Factor

The personnel factor was comprised of two subfactors, under one of which, ESAT Key Team Personnel, offerors were to demonstrate the skills and qualifications of personnel proposed for the key team positions. The solicitation provided a list of the education and experience requirements for each position. In her competitive range determination, the contracting officer viewed as a serious deficiency the TEP's conclusion that five of RAI's seven key personnel did not meet the RFP's combined minimum academic and technical experience requirements. RAI's arguments concerning two of these personnel are discussed below.

The Senior Organic Analytical Chemist, Supervisor was required to have a Masters of Science (M.S.) degree in chemistry and at least 6 years of experience in all facets of organic chemistry. The TEP found that while RAI's proposed individual had an M.S. in chemistry and 6 years of experience working in organic chemistry, he did not have experience in several facets of organic chemistry—including pesticides, herbicides, dioxin, drinking water, ground water, and sediments other than ash—that would be relevant to contract performance. The TEP considered this lack of experience particularly significant because the supervisor would be the final person to review data and would have to solve technical problems in all areas as the problems arose.

RAI essentially argues that, since the RFP did not identify the various facets of organic chemistry in which experience was required, the finding that the proposed individual does not possess this experience improperly was based on unstated RFP requirements.

We disagree. First, we see nothing unreasonable in the agency's expecting experienced offerors to be aware of the various aspects of organic chemistry relevant to performance of this contract, such that they did not have to be spelled out in the solicitation. Second, if RAI did not understand what was encompassed by "all facets" of organic chemistry, it should have sought amendment of (or protested) the RFP on this basis prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1996). In any case, while the solicitation did not list all the facets of organic chemistry, the statement of work did make reference to several of them; it stated on page A7 that samples referenced in this task area may consist of, but are not limited to, water, waste water, soil, sediment, waste, air, and biological matrices. It also stated (under "Organic Chemistry") that performance could include "qualitative and quantitative analysis of tetra-through octa-dioxin." We conclude that RAI was on sufficient notice of the experience requirements, and that the evaluation of this individual was reasonable.

Another of the key personnel was a Toxicologist. Although the agency found that RAI's proposed individual had the requisite degree and years of experience, it was concerned that she obtained her degree and most of her experience in China, rather than in the U.S. The TEP also was concerned that the individual did not have a great deal of experience dealing with the toxic compound characteristics in the environmental matrices which would be encountered during performance of the contract; specifically, the TEP noted that Ms. Lu did not have a site assessment or leaching study background, that her only dioxin work had been during her Ph.D thesis, and that she had no field experience at hazardous waste sites.

RAI asserts that it was unreasonable for the agency to question the individual's qualifications merely because she obtained her degree and experience in a foreign country. However, this was not the only basis for the TEP's concern with the individual's qualifications. We find nothing unreasonable in the agency's questioning the individual's qualifications based on her lack of experience in areas encompassed by the contract, aspects of the evaluation RAI does not contest.

We conclude that the deficiencies identified by the agency are supported by the record, and that the agency reasonably determined, based on these deficiencies,

that a substantial rewrite of the proposal would be required before RAI could become eligible for award. The agency therefore properly eliminated RAI's proposal from the competitive range.¹

The protest is denied.

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¹In a supplemental protest RAI argued that the agency improperly failed to notify RAI that it had been eliminated from the competitive range and that the award had been made to RAO. Since we have found that RAI was properly eliminated from the competitive range, we do not reach these issues since they would not affect the award decision.