



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Akal Security, Inc.

File: B-271385; B-271385.3

Date: July 10, 1996

Daya S. Khalsa for the protester.

Kathleen D. Martin, Esq., Department of State, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency was not obligated to advise offeror during discussions that its price was higher than that of other offerors or than the government's estimate where the agency did not consider the price unreasonable.
2. Protest that agency improperly applied unstated evaluation criterion by considering the rank that offerors' proposed key personnel had attained is denied where the consideration was reasonably encompassed by the solicitation criterion concerning management experience.

DECISION

Akal Security, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. S-OPRAQ-94-R-0434, issued by the Department of State (DOS). Akal argues that the agency improperly and unfairly evaluated its technical proposal.

We deny the protest.

The RFP sought proposals to provide qualified professional security and managerial personnel to perform uniformed guard services, such as access control, security for special events, and security inspections, at various State Department facilities, contemplating the award of an indefinite delivery, indefinite quantity contract for a base year, with 4 option years. The RFP set forth a 500-point technical evaluation scheme and provided that proposals would be evaluated under the following technical and management criteria, listed in descending order of importance: protective security personnel; approach; professional standards; clearance requirements; training; plans and programs; reporting and administration; corporate experience; understanding of need for security; management structure; and maintenance of government furnished equipment. The solicitation also listed

subfactors for each of the evaluation factors. The subfactor at issue here concerns the ability of an offeror to provide personnel meeting criteria for performance of duties set forth in Section J, Attachment J-2, Position Classifications and Job Descriptions for Uniformed Protective Services for Key Personnel, under the most heavily weighted protective security personnel factor. This subfactor laid out various experience and management requirements for each key position. For example, the position of central monitoring station watch officer required either the successful completion of 25 years of civilian or military equivalent law enforcement experience, of which 5 years must have been in management, and a successful demonstration of the proposed employee's ability to manage and supervise the numbers of personnel required for this contract, or an Associates Degree from an accredited college or university and three years of equivalent civil service or military law enforcement experience.

The State Department received 10 proposals. Following evaluation of initial proposals, the technical evaluation panel (TEP) established a competitive range of six proposals, including Akal's. The agency conducted written discussions with each offeror in the competitive range, and requested revised proposals. The agency evaluated the revised proposals, conducted further discussions with each offeror in the competitive range, and received a second round of revised proposals. As evaluated, Akal's technical and management proposal received a total of 427.70 points, ranking fifth out of the six proposals. Akal offered a price of \$82,206,841.¹ The agency then eliminated three proposals, including Akal's, from the competitive range, and this protest followed.²

DISCUSSIONS

Meaningful Discussions

Akal first protests that the agency failed to engage in meaningful discussions because it failed to discuss Akal's proposed price.

¹The technical and management scores of the six offerors ranged from 423.53 points to 499.67 points; the prices ranged from \$68,492,821 to \$84,304,201.

²The agency subsequently issued a request for best and final offers to the three offerors remaining in the competitive range. The agency awarded a contract to Inter-Con Security Systems, Inc., the lowest-priced, second highest technically ranked offeror, in the face of the protest, determining that urgent and compelling circumstances did not permit awaiting our decision in the matter.

In negotiated procurements, agencies are required to conduct meaningful discussions with offerors in the competitive range. Arthur Anderson & Co., 71 Comp. Gen. 233 (1992), 92-1 CPD ¶ 168. In order for discussions to be meaningful, an agency generally must point out deficiencies, uncertainties, or suspected mistakes in a proposal. See Federal Acquisition Regulation (FAR) §15.610(c) (FAC 90-31). Although an agency may inform an offeror during discussions that its price is considered to be too high or unrealistic where otherwise appropriate, FAR § 15.610(e)(2)(ii), the government has no responsibility to do so where the offeror's price is not considered excessive or unreasonable. Weeks Marine, Inc./Bean Dredging Corp., a Joint Venture, 69 Comp. Gen. 108 (1989), 89-2 CPD ¶ 505; Applied Remote Technology, Inc., B-250475, Jan. 22, 1993, 93-1 CPD ¶ 58; Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34. Further, an agency is not required to conduct price discussions with an offeror solely because its price is higher than that of other offerors; on the contrary, an agency is generally constrained not to advise an offeror of its price standing relative to other offerors. FAR § 15.610(e)(2).

Here, the agency performed a price analysis of the proposals and determined that Akal's price was competitive and not unrealistically high. Accordingly, the agency had no duty to advise Akal that its price was high. See Weeks Marine, Inc./Bean Dredging Corp., a Joint Venture, supra.

Evaluation of Akal's Technical Proposal

Next, Akal contends that in evaluating management experience, the agency improperly based its assessment on whether Akal's proposed key personnel had achieved a certain rank, such as a that of commissioned or warrant officer in the military, or lieutenant in a civilian police force. Akal argues that this represents use of an undisclosed evaluation criterion. The protester also asserts that the undisclosed rank requirement is inappropriate for evaluating the management experience of proposed key personnel. For example, Akal argues that one of its proposed employee's experience as a sergeant in a large metropolitan police department should qualify him as a lieutenant in the much smaller workforce being procured here.

A solicitation must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation. FAR §§ 15.605(d), 15.608. We perceive no violation of that rule here. The RFP required that individuals proposed for key positions possess certain civilian or military equivalent law enforcement experience, that a certain amount of the law enforcement experience be in management, and that the proposed individuals demonstrate their ability to successfully manage and supervise the numbers of personnel required for this contract. Offerors could also meet the requirements of

the key personnel positions by proposing candidates with Associate Degrees, and with a lesser amount of equivalent civil or military law enforcement experience.

In evaluating Akal's proposal, the evaluators determined that four of the eight key personnel proposed by the protester lacked the management experience required by the RFP. In each instance, Akal had submitted a resume specifying years of management experience which Akal designated in every case as "in rank up to" a listed rank, which was not that of a commissioned or warrant officer for any of the individuals. The evaluators, who were familiar with the responsibilities of civilian and military officers of various ranks, considered that the achieved ranks were below that of a command position, which they viewed as necessary to satisfy the RFP's experience requirement, particularly since the resumes of the proposed key personnel did not indicate that these four individuals possessed the kind of management experience required by the solicitation. For example, one of the employees proposed by Akal, whose highest achieved rank in the Army was that of master sergeant, had the following managerial experience: manager of the Quality Control team and convoy commander. We see nothing unreasonable in the evaluators' conclusion that this experience did not equate to the type of command experience that comes from exercising consistent, ongoing management and supervisory responsibilities. Akal's proposed employee's experience seems to involve ad hoc supervisory roles which did not represent regular, day-to-day supervisory responsibilities, and nothing in Akal's proposal otherwise demonstrated that its proposed key personnel had the experience the agency was seeking. In short, we find nothing improper in the evaluation here.

The protest is denied.

Comptroller General
of the United States