



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: B & K Enterprises

File: B-276066

Date: May 7, 1997

Timothy H. Power, Esq., for the protester.

Philip K. Kauffman, Esq., Merilee D. Rosenberg, Esq., and Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under solicitation for janitorial services at an outpatient clinic which contained no provision for considering hospital-specific experience (as opposed to the offeror's general history of compliance with specifications and delivery schedules), protest that agency should have given extra credit during proposal evaluation for hospital-specific experience is without merit.

2. Under solicitation for janitorial services, protester's contention that allowing the awardee to substitute the protester's janitorial personnel for the personnel identified in the awardee's proposal presents no basis for concluding that the substitution of personnel constitutes an improper "bait and switch" where there was no limitation on substitution of personnel in the solicitation and there is no basis to conclude that the qualifications of the proposed personnel influenced the evaluation such that allowing the substitution would compromise the validity of the technical evaluation.

DECISION

B & K Enterprises protests the award of a contract to P. E. Hoover Enterprises, Inc. under solicitation No. 544-001-97, issued by the Department of Veterans Affairs (VA) for janitorial services. The protester asserts that the agency did not evaluate proposals in accordance with the criteria listed in the solicitation.

We deny the protest.

On September 13, 1996, the agency issued the solicitation for a firm, fixed-price contract for a base year, with two 1-year option periods, to furnish all personnel and materials necessary to provide janitorial service at its outpatient clinic in Greenville, South Carolina. The solicitation incorporated by reference the clause at Federal Acquisition Regulation § 52.215-16, providing for award based on the offer

most advantageous to the government, price, and other factors, specified elsewhere in the solicitation, considered.

Section M of the RFP, which contained the selection criteria for award, stated that the agency would score proposals, on a scale of 100 points, and listed the evaluation factors, in descending order of importance, as follows:

"1. Offeror's previous experience, present expertise and [p]ersonnel that will perform the services under this [j]anitorial [s]ervice contract.

"a. Offeror must provide three references with full names and addresses, point of contact and telephone number of others they have performed similar services for. If [o]fferor has performed similar services for other [g]overnment agencies, please provide this information also. Offeror will submit resume of individuals to perform the work under this contract.

"b. Information should include at a minimum the offeror's record of conforming to the specifications and to standards of good workmanship, adherence to contract schedules and offeror's history for reasonable and cooperative behavior and commitment to customer satisfaction.

"2. Offeror's understanding of the 'Scope of Work.' Offeror's [a]bility to successfully comply with contract requirements and offeror's proposed *Quality Control Program.

"3. [Price]: The lowest evaluation price in Section B will be given the maximum points available for [price] evaluation purposes. Each other offeror will receive a percentage of the maximum points allowed for this factor based on the ratio of their [price] to the lowest [price]."

The statement of work (SOW) required a minimum of three employees, with a minimum of 1-year experience in housekeeping/janitorial service, one of which would be a working supervisor "on duty daily and during special cleaning projects." Work hours encompassed a 40-hour work week--8 hours a day, 5 days a week. The SOW required the supervisor to have 2 years experience with housekeeping in a health care environment. The solicitation contained no limitation on substitution of personnel, but the SOW required the contractor to submit documentation and references of previous employment for all personnel.

The agency received nine proposals on October 15 and referred them to a technical evaluation panel. The panel performed an evaluation, and the agency conducted discussions. The evaluation panel reviewed the offerors' responses to discussion questions, and the agency then asked the offerors to submit their best and final

offers (BAFO) by December 11. The BAFOs of Hoover and the protester received the maximum technical score of 90 out of 90 available points. However, Hoover's slightly lower price received 5 out of 10 available price points, versus 4 points for the protester. On January 16, 1997, the agency awarded a contract to Hoover, and this protest followed.

The protester's initial contention is that its specific VA hospital experience should have been the basis for a higher evaluation rating. This argument is untimely to the extent that B & K contends that the solicitation should have specifically provided for the consideration of such experience. 4 C.F.R. § 21.2(a)(1) (1997) (protest alleging a solicitation impropriety must be filed prior to the time set for receipt of initial proposals); Sun Microsystems Fed., Inc., B-254497.2; B-254497.3, May 20, 1994, 94-1 CPD ¶ 318 at 14 (protest that RFP failed to provide for consideration of cost of switching from the incumbent to another supplier should have been raised prior to the date set for receipt of initial proposals). In any event, to the extent that B & K asserts that it should have received more credit for its hospital-specific experience, B & K has no grounds for protest, since the record here shows that its proposal received the maximum technical score--90 of 90 points available in the technical evaluation.

Moreover, to the extent the protest can be read as contending that it is implicit in the experience evaluation factor that proposals from offerors with hospital-specific experience would receive higher scores than proposals from offerors without such experience, the record does not support that contention. The language of the RFP indicates that the evaluation's chief emphasis was on the contractor's record of following simple, straightforward instructions--its record of compliance with specifications and delivery schedules, its standards of workmanship, and its reputation for cooperative behavior.

As a second ground of protest, B & K contends that Hoover did not submit true and correct resumes for the persons that it intended to perform work under the contract. The protester asserts that the awardee contacted B & K's employees after award about the possibility of working for Hoover, an action that showed Hoover's intention of substituting for those employees whose resumes it submitted in its proposal.

Proposing to employ specific personnel that the offeror does not expect to actually use during the contract performance--a "bait and switch"--can have an adverse effect on the integrity of the competitive procurement system. By proposing individuals of whom evaluators are likely to think highly, with the intention of substituting less qualified personnel after award, an offeror compromises the validity of the technical evaluation. CBIS Fed., Inc., 71 Comp. Gen. 319, 322-324 (1992), 92-1 CPD ¶ 308 at 5-7. On the other hand, where there is no evidence that the agency was misled into selecting an offeror it would not otherwise have selected, we will not overturn a selection decision merely because the awardee employs a different group of

employees from those proposed, particularly where the substituted employees have the same qualifications and skill levels as those proposed. Ebon Research Sys., B-261403.2, Sept. 28, 1995, 95-2 CPD ¶ 152 at 5.

Here, the protester is apparently suggesting that by substituting the personnel that B & K would have employed for those proposed by Hoover, the awardee is somehow degrading contract performance from the level proposed in its offer. Such a suggestion is in direct contradiction to B & K's argument, that its personnel are superior to those proposed by Hoover because of their specific VA hospital experience. In any event, as noted above, the solicitation contained no limitation on the substitution of personnel after award; nor, in the context of this janitorial effort, is there any basis for presuming that any particular candidate for the position possesses such outstanding qualifications for the position that allowing an offeror to substitute some other candidate would compromise the validity of the technical evaluation.

In commenting on the report filed by the agency in response to the protest, B & K argues that the procurement should have been conducted by sealed bidding, since price was the ultimate determining factor in selecting a contractor. To the extent B & K is challenging the procurement approach chosen by the agency, which was clear from the RFP, any such argument is untimely, since allegations of impropriety apparent on the face of the solicitation must be raised prior to the time set for submission of initial proposals. 4 C.F.R. § 21.2(a)(1).

Finally, to the extent that the protester is contending that the evaluation and selection of the lower-priced offeror was inconsistent with the solicitation's emphasis on technical factors, B & K points to the fact that the agency retained Hoover's proposal in the competitive range, despite its failure to submit a full technical proposal, simply because of the awardee's attractive price. The agency's decision to include Hoover's proposal in the competitive range, despite the omission of certain technical information,¹ does not show that the agency abandoned the evaluation scheme in the RFP in favor of making award on the basis of price alone. Rather, the record shows that in its BAFO Hoover substantially improved its proposal's initial technical score by providing the missing information; that B & K's and Hoover's BAFOs received the same technical scores; and that the agency then selected Hoover's proposal, the lower priced of the two. Even where the solicitation emphasizes technical considerations over price, price properly becomes the determining factor for award where, as here, proposals are found technically equal. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366 at 9-10. Thus, we see no basis to conclude that

¹Specifically, the evaluators found that Hoover's initial proposal lacked information regarding the firm's experience, expertise, and proposed personnel.

the agency's evaluation or selection decision was inconsistent with the evaluation scheme set out in the RFP.

The protest is denied.

Comptroller General
of the United States