



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: SWR, Inc.

File: B-286229; B-286229.2

Date: December 5, 2000

Benjamin M. Bowden, Esq., Albrittons, Clifton, Alverson & Moody, for the protester. Michael Colvin, Department of Health and Human Services, 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

Agency decision to exclude proposal for operation of two animal care facilities from the competitive range as unacceptable was reasonable where proposal confused requirements of the facilities, failed to address requirements of one facility, and did not address potential problems that could affect the animals and possible solutions to those problems.

DECISION

SWR, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 2000-N-00050, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), for the care and maintenance of laboratory animals (used for research) at the Chamblee and Lawrenceville animal care facilities.

We deny the protest.

The solicitation provided for a best value evaluation based on technical, past performance and price factors. The technical factors to be evaluated were staffing, experience and qualifications; management approach; understanding the project; and quality assurance plan. A technical evaluation panel (TEP) evaluated the proposals received and determined that SWR's was unacceptable due to substantial informational and other deficiencies under each evaluation factor; it concluded that SWR did not understand how to operate an animal care facility for laboratory animals. Competitive Range Decision (CRD) at 2.

More specifically, with respect to staffing, the TEP found that SWR did not propose a sufficient number of personnel to ensure compliance with the statement of work, proposed an assistant project manager without minimal experience and education requirements, and lacked the depth to provide staff. Evaluation Report (ER) at 5. With respect to management approach, the TEP questioned SWR's ability to provide the initial workforce and replacements, and found that the proposal did not set forth an adequate recruitment plan and did not discuss potential difficulties and problems that may be involved in performing animal husbandry services, with approaches for their resolutions.¹ Id. With respect to understanding the problem, the TEP was concerned because SWR repeated the standard operating procedures listed in the RFP without discussing how they would be implemented. Id. Finally, under quality assurance plan, the TEP found that SWR's plan for contact with the project manager was unrealistic. Id. at 6. CDC excluded SWR from the competitive range based on the unacceptability of its technical proposal. CRD at 2. SWR protests that decision, challenging several aspects of the evaluation.

The competitive range consists of the most highly rated proposals (except where the range is reduced for purposes of efficiency), based on evaluation of the information submitted in each proposal against the stated evaluation criteria. United Housing Servs., Inc., B-281352.14, May 7, 1999, 99-1 ¶ 80 at 3. An offeror runs the risk of having its proposal downgraded and excluded from the competitive range if the proposal is inadequately written. Id. In reviewing protests of competitive range determinations, we will not reevaluate proposals; rather, we will review the record to ensure that the evaluation and competitive range determination were reasonable and consistent with the terms of the solicitation. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 4. The evaluation here, and the agency's decision to exclude SWR's proposal from the competitive range, were reasonable.

MANAGEMENT APPROACH

CDC found SWR's proposal deficient under the management approach factor because, among other things, in addressing anticipated problems that could arise and potential solutions to those problems, SWR did not indicate that it had access to veterinary or laboratory animal science consultation services. ER at 5. SWR concedes that it would be logical for the agency to require the contractor to have access to professional consultation services, Protest at 3, but argues that, since the solicitation did not list such a requirement, it was improper for CDC to use this as a criterion in evaluating SWR's proposal.

¹ The agency listed SWR's failure to have an adequate recruitment plan under the staffing factor. However, the RFP listed it under the management factor, and SWR addressed it under the management factor.

Solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation. Federal Acquisition Regulation (FAR) §§ 15.304(d), 15.305(a). However, while agencies are required to identify the major evaluation factors, they are not required to identify the various aspects of each factor which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Advanced Data Concepts, Inc., B-280967.8, B-280967.9, June 14, 1999, 99-2 CPD ¶ 19 at 4.

The RFP instructed offerors that, in addressing management approach, they should provide a summary of anticipated major difficulties and problem areas, with recommended approaches to resolving them. RFP § L.12(2).² Since the contract to be awarded called for the care of laboratory animals on a daily basis, we think this instruction logically encompassed requiring offerors to demonstrate in their proposals that they are aware of potential problems related to the care of animals, including illness or injury, and potential solutions to those problems.³ It follows that CDC reasonably downgraded SWR's proposal for failing to identify these potential problems.

The agency also was concerned, under the management approach factor, that SWR would be unable to provide an initial workforce and replacements with the required experience and qualifications. ER at 5. This was related to a concern that SWR did not have an adequate recruitment plan. Id. With respect to recruitment, offerors were required to include a discussion of resources to be used for recruiting new and replacement personnel. RFP at § L.12(2). CDC found SWR's recruitment plan inadequate because it was too generic. Contracting Officer's Statement (COS) at 5. More specifically, SWR stated that recruitment would be done through professional and trade journals applicable to the field of laboratory animal care services, generic veterinary Internet sites and newspapers, but did not indicate that it was familiar with appropriate journals or professional societies in the specialized area of laboratory animals, within the field of veterinary medicine. Id. SWR asserts that its recruitment plan in fact was commercially feasible, and that this aspect of the

² SWR asserts that it raised potential recruitment problems in response to this instruction, and suggests that this is all that the RFP required. CDC listed the recruitment problem response as a strength in SWR's proposal. However, there was no basis for SWR to read the RFP instruction as limiting the problems to be identified to this area, and the fact that the agency identified SWR's identification of potential recruitment problems as a strength did not preclude it from also finding the proposal deficient for not identifying animal-related problems.

³ In its report addressing SWR's failure to address potential problems concerning the animals, CDC states that SWR did not identify personnel with a laboratory animal background. SWR disputes this statement. We need not resolve this dispute, since this was not a basis for downgrading SWR's proposal in the evaluation.

evaluation therefore was flawed. This response constitutes mere disagreement with the evaluation; it does not address the basis for the agency's conclusion. In this regard, the agency expressed concern, not with the commercial feasibility of SWR's recruitment plan, but with SWR's apparent lack of familiarity with the journals and associations that were at the heart of its plan. We find nothing unreasonable in the agency's concern.

UNDERSTANDING THE PROJECT

The solicitation advised offerors that in responding under the understanding the project factor they should provide a narrative summary of their understanding of the required services, as outlined by the statement of work (SOW). RFP § L.12(b)(3). In reviewing SWR's proposal under this factor, the agency noted that SWR merely repeated the standard operating procedures and SOW, and provided no information demonstrating that it understood how to implement them. See COS at 6. The TEP concluded that SWR did not understand how to operate an animal care facility. In its report in response to SWR's protest, CDC further noted that, while the RFP listed different services for the Chamblee and Lawrenceville facilities, SWR's proposal did not distinguish between the two facilities. For example, the proposal discussed malaria slides for the Lawrenceville facility, but such studies are performed only at the Chamblee facility. COS at 6. The proposal also contained no discussion of the restraint of dogs, livestock and other exotic animals located at the Lawrenceville facility, even though such animals were listed as resident at that facility. Id.; SOW § C.5(c).

SWR does not dispute that it merely repeated the standard operating procedures, without discussing how those procedures would be implemented in the SOW. SWR also concedes that it confused the requirements of the Lawrenceville and Chamblee facilities. SWR asserts, however, that this confusion was due to the fact that the RFP listed non-human primates at both facilities.

The evaluation in this area was reasonable. The RFP specifically advised offerors to provide a narrative demonstrating their understanding of the requirement. SWR did not provide any meaningful narrative, instead merely restating the standard operating procedures and SOW. Offerors run the risk of having their proposals downgraded or rejected where the proposal as submitted is inadequately written. McHargue Constr. Co., B-279715, July 16, 1998, 98-2 CPD ¶ 21 at 6. Further, even if SWR found the RFP confusing with respect to the location of non-human primates, SWR has not explained, and it is not clear to us, how this alleged confusion led to SWR's failure to distinguish between the two facilities regarding the requirement for malaria studies. Section C of the solicitation clearly delineates the requirements for the two facilities. With respect to the Chamblee facility, the solicitation states that primates are exposed to mosquitoes, and that the offeror shall "make malaria slides on all infected non-human primates." SOW § C.4.3(b). In contrast, the requirements for Lawrenceville do not address malaria studies. See SOW § C.5. Nor does the alleged RFP confusion explain SWR's failure to address the restraint of dogs,

livestock and exotic animals at the Lawrenceville facility; again, the solicitation clearly provided that these animals would be cared for at that facility. It thus appears that SWR did not read the solicitation carefully, and/or did not understand that the two facilities were to be treated differently. In any case, given SWR's failure to provide a narrative beyond restating the standard operating procedures and SOW, the agency reasonably concluded that SWR failed to demonstrate an understanding of the requirements of the RFP.

We conclude that the evaluation was reasonable in the areas SWR challenges. Given the deficiencies in these areas and the other evaluation deficiencies SWR does not challenge, there is no basis for us to question the agency's decision to exclude SWR's proposal from the competitive range as unacceptable.

PAST PERFORMANCE

SWR argues that CDC improperly failed to consider past performance, a stated evaluation factor, in determining whether to include its proposal in the competitive range. This argument is without merit. Since the agency concluded--reasonably, we have found--that SWR's proposal was technically unacceptable, there was no possibility that SWR would receive the award, even with a favorable past performance evaluation. Under these circumstances, it would have served no purpose--and the agency thus was not required--to consider SWR's past performance. See generally Telestar Corp., B-275855, Apr. 4, 1997, 97-1 CPD ¶ 150 at 6 (where proposal is deemed technically unacceptable, and therefore ineligible for award, agency need not consider price in setting competitive range).⁴

DEFICIENCIES IN OTHER PROPOSAL

SWR argues that the agency found deficiencies in another offeror's proposal, and nevertheless included that proposal in the competitive range. Specifically, the agency found that the offeror's proposed assistant project manager for the Lawrenceville facility did not meet the education requirements of the RFP, and that the proposal did not specifically acknowledge the need for emergency personnel to

⁴ In its October 30 comments in response to the agency report, SWR for the first time argues that CDC was required to consider price in determining the competitive range. In November 9 comments responding to the agency's report on a supplemental protest, SWR argues for the first time that the agency improperly found that SWR did not offer a sufficient number of staff. SWR knew from the August 28 debriefing that the agency had eliminated its proposal from the competitive range without considering price, Debriefing Notes at 5, and that the agency found SWR had offered an inadequate number of personnel. Id. Since SWR raised these issues more than 10 days after the debriefing, they are untimely and will not be considered. 4 C.F.R. § 21.2(a)(2) (2000).

respond within 1 hour, as required by the RFP. SWR maintains that it was improper to include this proposal in the competitive range while excluding SWR's.

This argument is without merit. As stated above, the competitive range is comprised of the most highly rated proposals. This does not mean that competitive range proposals cannot contain weaknesses or deficiencies. Indeed, the purpose of establishing a competitive range is to hold discussions with offerors so that they can revise their proposals to meet the agency's requirements. FAR §§ 15.306(c)(d), 15.307. Here, despite the two cited deficiencies, the proposal in question was the highest-rated proposal received, and the agency found that the proposal demonstrated a clear understanding of the RFP requirements, provided extensive details with respect to how it would implement the contract and was overall acceptable. Agency Supplemental Report at 3. In contrast, SWR's proposal contained numerous material deficiencies which, the agency found, indicated that SWR did not understand the requirements, and rendered its proposal unacceptable. We conclude that there is no basis to question the agency's decision to include the proposal in the competitive range while excluding SWR's.⁵

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

⁵ SWR also notes that its proposal was criticized in several areas where one or more of the evaluators found it acceptable, and asserts that this undermines the agency's evaluation conclusions. However, after each evaluator evaluated the proposals individually, the evaluators collectively agreed on a consensus evaluation, *i.e.*, one that reflects the final conclusions of all evaluators, and the final evaluation was based on this consensus. See TER at 1. Where an agency uses such a consensus evaluation approach, the consensus evaluation is controlling, and the fact that there may be inconsistencies among the individual evaluators' findings is irrelevant in assessing the reasonableness of the overall evaluation. See LB&B Assocs., Inc., B-281706, Mar. 24, 1999, 99-1 CPD ¶ 74 at 6.