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United States General Accounting Office
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Comptroller General
of the United States

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Decision

Matter of: Bannum, Inc.

File: B-291847

Date: March 17, 2003

Nancy M. Camardo, Esq., Joseph A. Camardo Law Office, for the protester.
Alex D. Tomaszczuk, Esq., Shaw Pittman, for Dismas Charities, Inc., an intervenor.
Mary E. Carney, Esq., Bureau of Prisons, 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

Protester's proposal was reasonably eliminated from the competitive range where, even after protester was informed of proposal's failure to meet material solicitation requirements during two rounds of discussions, protester failed to correct the deficiencies.

DECISION

Bannum, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 200-0730-MA, issued by the Bureau of Prisons (BOP) for community corrections center (CCC)¹ services for federal offenders.

We deny the protest.

The solicitation provided for award of a fixed-priced contract on a "best value" basis. The evaluation was to be based on the following factors: past performance, community relations, technical (reports, policy and procedures, facility, overall programs approach), management, and price. Bannum submitted a proposal by the May 28, 2002 due date. BOP found that the proposal was deficient in that it did not comply with, among other things, four material RFP requirements: it did not include community support documentation for the proposed program site; it did not include evidence of a written agreement from a licensed general hospital, physician or clinic

¹ CCC contractors provide services, including employment and residence development, to assist federal offenders in becoming law-abiding citizens.

to ensure that emergency medical service would be available 24 hours per day; it did not clearly indicate that Bannum would provide a required offender supervision staff position during the 8 a.m. to 4 p.m. shift, contrary to the requirement that the position be staffed on a 7-day, 24-hour basis; and it did not include the environmental assessment required where new construction was proposed.

BOP pointed out the first three deficiencies to Bannum during discussions in July, and Bannum did not provide the required information in its revised proposal. BOP again pointed out these three deficiencies during a second round of discussions on October 31, and also noted that Bannum had failed to include the required environmental assessment report. In its second proposal revision, instead of providing the required documentation, Bannum informed the BOP that it was in the process of obtaining the community support documentation and the hospital agreement, and that, due to the expense of providing an environmental assessment, it would provide the assessment after being notified that it was the apparent awardee or after it received the award. Bannum also stated that it would add a staff member for the 8 a.m. to 4 p.m. shift, but the staffing chart included with the revised proposal showed an additional staff member for the 4 p.m. to 12 a.m. shift instead of the 8 a.m. to 4 p.m. shift. Based on these remaining deficiencies, BOP removed Bannum's proposal from the competitive range.

Bannum primarily argues that its proposal should not have been eliminated from the competitive range because the deficiencies were minor, and could have easily been corrected through further communications with the agency, or after Bannum received the required documentation.²

The determination of whether a proposal is in the competitive range is principally a matter within the discretion of the procuring agency, and we will review such a determination only to ensure that it was reasonable and consistent with the solicitation and applicable statutes and regulations. D S Inc., B-289676, Mar. 12, 2002, 2002 CPD ¶ 58 at 3.

The decision to exclude Bannum's proposal from the competitive range was reasonable. The solicitation specifically required offerors to provide documentation showing community support for the proposed site, RFP § L.8(i); an environmental assessment where, as in Bannum's case, new construction was contemplated, RFP §§ L.13, J, att. 2; an agreement with a hospital for 24-hour emergency service, statement of work (SOW) at 91; and a staff position to supervise offenders 24 hours a

²Bannum also argues that it met the community support requirement by forwarding two letters of community support to BOP on November 25. However, this was well after the November 14 due date for Bannum's second, and final, proposal revision.

day, 7 days a week. SOW at 11. Clearly stated RFP requirements are considered material to the needs of the government, and a proposal that fails to conform to material terms is unacceptable and may not form the basis for award. Beckman Coulter, B-281030, B-281030.2, Dec. 21, 1998, 99-1 CPD ¶ 9 at 6. (The agency also has explained why the requirements are material, pointing out, for example, that it required a hospital agreement because it wanted assurance that inmates would have appropriate access to emergency medical services. Agency Report at 7-8.) Despite the clearly stated requirements, and despite being told in each of two rounds of discussions (one in the case of the environmental assessment) that its proposal did not meet the requirements, Bannum never submitted a compliant proposal.³ Under these circumstances, BOP's decision to eliminate Bannum's proposal from the competitive range was reasonable.

Bannum argues that the community support documentation and hospital agreement were unnecessary because Bannum received zoning approval by right—*i.e.*, without the need for evidence of community support—and hospitals must treat all patients who enter, with or without a hospital agreement. Bannum further argues that, due to the expense involved, the environmental assessment should not have been required with the proposal, but only after notice of award. Under our Bid Protest Regulations, protests of alleged deficiencies on the face of a solicitation must be filed no later than the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2003). Since the requirements in question were included in the initial solicitation, its arguments here that they were unnecessary or ill-advised had to be raised prior to the May 28 closing time. Infrared Tech. Corp., B-282912, Sept. 2, 1999, 99-2 CPD ¶ 41 at 7 n.3. Because Bannum did not raise the arguments until after rejection of its proposal, they are untimely and will not be considered.

The protest is denied.

Anthony H. Gamboa
General Counsel

³ To the extent Bannum contends BOP should have permitted the firm to correct the deficiencies during another round of discussions, its argument is without merit. Procuring agencies are not required to conduct successive rounds of discussions. OMV Med., Inc., B-281490, Feb. 15, 1999, 99-1 CPD ¶ 38 at 7.