

Protest of)	Date: October 30, 1991
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SERVICE AMERICA CORPORATION)	
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Solicitation No. 389990-91-A-0188)	P. S. Protest No. 91-56

DECISION

Service America Corporation ("Service American") timely protests the award of a contract to Southern Foodservice ("Southern") under Solicitation No. 389990-91-A-0188 for food services for the main office complex and satellite locations in Cincinnati, Ohio. Service America claims that its proposal was evaluated incorrectly and that it should have been awarded the contract.

The solicitation was issued by the procurement service office in Columbus, OH, on April 16, 1991, with an offer due date of May 24. Section M.1 of the solicitation provided that award would be made "to the responsible offeror whose proposal will be most advantageous to the Postal Service, considering cost or price and other factors specified elsewhere in this solicitation." Section M.2 stated: "The Postal Service may award a contract on the basis of initial proposals received, without discussions. Therefore, each initial proposal should contain the offeror's best terms from a cost or price and technical standpoint."

The evaluation factors and scoring system as listed in Section M.3 of the solicitation were as follows:

<u>Factor</u>	<u>Maximum Score</u>
Sanitation Practices	200
Personnel Staffing and Management	325
Menu Prices, Portion Sizes, and Management Controls	200
Menu Variety	200
Budget, Accounting System, and Controls	75
TOTALS	1000

Section J.2 b.I. instructed offerors to provide the following information relative to Sanitation Practices:

Include standards, operating requirements, sanitation training programs, inspection procedures, frequency schedules, and management reports. If subcontracting's anticipated for any cleaning or maintenance services, state which services and yearly cost projections.

Further, Section J.2 b.II., Personnel Staffing and Management, instructed offerors to:

Provide a comprehensive and detailed staffing chart for the operating of this facility. Provide the company's organization chart showing the chain of command of supervision and staff that will supplement the unit management. Provide background and qualification of the on-site manager to be assigned to the operation if awarded the contract, and a brief resume on the key managers listed in the chain of command. Provide policies and procedures relative to employee and management training programs.

Finally, Section J.2 d. stated that "[w]hen prices are required in Section A [Items and Prices], they will be evaluated as a part of the entire proposal."

Of the proposals received, Southern and Service America received the two highest evaluated scores. Service America lost points in the Sanitation Practices and Personnel Staffing and Management categories, making its proposal second in total points to Southern's at 890 points and 894 points, respectively. Award was made to Southern on August 2, and Service America was debriefed on August 8.

In its August 12 protest, Service America complains that even though this was to be an award without discussions, a representative of Southern was in the Cincinnati facility one week prior to the award date. Service America implies that improper discussions were held between the Postal Service and that representative. From information received in its debriefing, Service America questions its evaluation scores for sanitation practices and personnel staffing, management and training, and disputes that its proposal was deficient in these areas "compared to any other proposal." Finally, the protester asserts that its proposed commission rate was 15.7% "compared to 10.5% from the company to whom the contract was awarded." Therefore, according to the protester, award was not made to the offeror whose proposal was the most advantageous to the Postal Service.

The contracting officer states that a Southern representative was present in the Cincinnati facility the morning that the contract was signed, but that he instructed the post office personnel to ask the representative to leave "because we had not yet notified the unsuccessful offerors which company was awarded the contract." The contracting officer denies that any communications took place between the Southern representative and the Postal Service that would meet the Procurement Manual (PM) definition of "discussions."^{1/} He states that "Southern Foodservice was aware of our

^{1/} The PM defines discussions as:

Any oral or written communication between the Postal Service and an offeror (other than communications conducted for the purpose of clarification) that is initiated by the Postal

intent to award them the contract based on communications regarding their financial statements and contract bonding requirements." The contracting officer asserts that the Postal Service did not discuss Southern's offer or give Southern an opportunity to revise its offer.

The contracting officer states that no comparisons were made to other proposals during the protester's debriefing, and that therefore Service America was advised only about how it could have improved its own proposal. He states, as an example, that the protester was informed that its proposal would have scored higher had it included, under the sanitation practices category, a statement of "how much or the length of time supervisory personnel receive training and if it had included a timeline for completion of training of supervisors and employees." The contracting officer further asserts that he informed Service America that its proposal would have been stronger "had it included a more detailed staffing chart showing when employees would work, not just a chart showing total hours."

Regarding Service America's commission rate, the contracting officer points to Section J.2 of the solicitation, and states that the protester's offer of better commissions was only one of many factors that evaluators considered when they assigned point scores under the evaluation categories. The contracting officer concludes that since Southern received the highest overall total score, awarding the contract to it was in the best interest of the Postal Service.

In response to the contracting officer's statement, Service America claims that its proposal was very specific with respect to the categories in which it received fewer points than the awardee, and questions whether the other proposals were as specific. Service America states that it is at a disadvantage because the manager of the procurement service office denied its request to see individual scores for each evaluation criteria and copies of the proposals submitted. The protester also states that it offered to make its complete training and sanitation manuals available for inspection if the evaluators needed more information, but the evaluators did not ask to see them. Service America further alleges that the contracting officer asked Southern for more information about its proposal when he communicated with Southern about its financial statements and contract bonding requirements. Finally, the protester reiterates its claim that if its commission rate had been "seriously considered" in the evaluation, "the points earned by Service America should have been so much greater than the winning proposal that it would have overcome any shortcoming"

In rebuttal, the contracting officer states that Service America was advised of its right under the Freedom of Information Act to appeal the decision to deny the disclosure of individual evaluation scores and proposals.^{1/} The contracting officer also states that

Service and (a) involves information essential for determining the acceptability of a proposal or (b) provides the offeror an opportunity to revise its proposal.

PM 4.1.5 a.3.

^{2/} Requests for information are properly directed to the records custodian, in this case, the contracting officer or the manager of the procurement service office. This office does not resolve conflicts between contracting officials and protesters about the release of information. See Dataware Systems Lease, Inc., P.S. Protest No. 91-41, October 10, 1991; Cohlmia Airline, Inc., P.S. Protest No. 87-118, April 13, 1988.

both the solicitation and the preproposal conference made it clear to the offerors that the award could be made without discussions and that offerors should submit their most advantageous proposal. He rebuts the protester's assertion that he conducted discussions with Southern by stating that he asked for Southern's financial statements to make a responsibility determination. Finally, the contracting officer reiterates his previous statement about the weight assigned to proposed commission rates and stresses that each evaluation category was scored as required by the solicitation.

Decision

The thrust of Service America's protest is that its proposal received fewer points than it merited and generally was treated unfairly in comparison to other proposals. It is well settled that the evaluation or scoring of proposals is the procuring activity's responsibility, and procuring officials have a

reasonable degree of discretion in that regard. Apec Technology Limited, P.S. Protest No. 88-23, June 30, 1988; Cohlmia Airlines, Inc., P.S. Protest No. 87-118, April 13, 1988; see also Falcon Systems, Inc., et al., P.S. Protest Nos. 86-31, 86-33, and 86-35, July 25, 1986; F.R. and Lee Mackercher, P.S. Protest No. 85-45, September 17, 1985. In reviewing a technical evaluation, this office will not evaluate the proposal de novo, but instead will examine the contracting officer's evaluation only to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable. Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986. Thus, our review of the technical evaluation of proposals is limited, and we will not substitute our judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. Service America Corporation, P.S. Protest No. 89-27, August 22, 1989; see also, Canteen Company, P.S. Protest No. 89-15, March 22, 1989.

In this case, Service America has failed to show that the evaluation of its proposal was arbitrary, unreasonable or in violation of procurement regulations. We viewed in camera the worksheets of the evaluators and the scores that they assigned to Service America and Southern for each category. That review indicates that Service America and Southern were evaluated on the basis of their submitted proposals, in accordance with the requirements of the solicitation. Southern received higher scores than the protester for the categories Sanitation Practices and Personnel Staffing and Management as well as a higher overall score. Our review did not reveal a basis to conclude that the scoring of Service America's proposal was arbitrary or unreasonable. Service America has not carried its burden of showing otherwise. "Unsupported allegations or mere disagreement with the evaluation scores given cannot amount to evidence necessary to sustain a protest." Frederick Manufacturing Co., Inc., P.S. Protest No. 88-03, March 25, 1988.

Service America argues that since its commission rate was higher than Southern's, it was not in the best interest of the Postal Service to award the contract to Southern. The solicitation, however, did not state that the contract would go to the proposal with the highest commission rate. It expressly provided that pricing would be evaluated "as a part of the entire proposal." The selection and weighting of evaluation criteria are

duties falling within the contracting officer's discretion, in order to determine which proposal will best meet the Postal Service's needs. Frederick Manufacturing Company, P.S. Protest No. 87-13, April 8, 1987. Once those criteria are selected and weighted they must be applied as stated in the solicitation. Id. Here there is no evidence in the record that the evaluation factors were not applied as stated in the solicitation. Our review of the evaluation scores revealed that the protester received more

points than any other offeror in the category that included pricing, which indicates that its allegation that its commission rate was not "seriously considered" is without merit.^{1/}

The protester also has implied that the contracting officer improperly conducted discussions with the awardee's representative in the Cincinnati post office before award was made. The contracting officer has responded that no discussions took place and that the representative was asked to leave. The protester has offered no proof for its allegation aside from the fact of the representative's presence, which the contracting officer has not disputed. In the absence of any evidence in the record to contradict the contracting officer's explanation of the circumstances, we cannot find that improper communications were exchanged. See generally, EnPro Corporation, P.S. Protest No. 91-48, October 9, 1991; Five Star Catering, P.S. Protest No. 8868, January 31, 1989.^{1/}

Finally, Service America protests the fact that the evaluators did not ask to inspect the company's complete training and sanitation manuals. In an award without discussions, there is no requirement that the Postal Service communicate with offerors about the deficiencies in their proposals. See PM 4.1.5 f; 4.1.5 g. Instead, the burden is on an offeror to submit an adequately written and complete proposal. See Section M.2 of the solicitation, supra. If Service America had in its possession information that it wished to be considered, it should have submitted it with its proposal. Any reduction in the evaluation scoring that results from an incomplete proposal is attributable only to the offeror. Hill's Capitol Security, Inc., P.S. Protest No. 90-25, July 20, 1990; Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986.

The protest is denied.

[Signed]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 5/12/95 WJJ]

^{3/} Service America evidently disagrees with the weight given to pricing factors in the evaluation section of the solicitation. To the extent that the protester is alleging that proposed commission rates should have been worth more points in the evaluation, then that allegation constitutes a protest against the terms of the solicitation and is untimely. See PM 4.5.4 b; see also, Lista International Corporation, P.S. Protest No. 90-47, September 11, 1990 (protests against the terms of a solicitation must be made before the date for submission of proposals).

^{4/} The protester also has pointed to the contracting officer's request to Southern for financial data as evidence that discussions took place. However, such a request does not meet the PM definition of "discussion." See footnote 1, supra. Instead, it is evident that the contracting officer was gathering information for his responsibility determination pursuant to PM 3.3.1 e.3(c).