



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Rochester Optical Manufacturing Company

File: B-292137.2

Date: March 16, 2004

Robert G. Fryling, Esq., and Brian S. Gocial, Esq., Blank Rome, for the protester.
Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that awardee's proposal demonstrated the capability to perform solicitation's statement of work requirement regarding contractor's obligation to have web capabilities for on-line ordering and order tracking, where awardee's proposal identified the specific software it intended to employ, described when and how the software would be installed, and described the procedures agency personnel would use to access the system.

DECISION

Rochester Optical Manufacturing Company protests the Department of Veterans Affairs' (VA) award of a contract to Korrekt Optical under request for proposals No. 642-01-03 to provide prescription eyeglasses for various VA medical centers. Rochester, the incumbent contractor for the requirements at issue, protests that the agency failed to properly evaluate Korrekt's proposal.

We deny the protest.

BACKGROUND

In December 2002, the agency published the solicitation at issue here, seeking proposals to provide prescription eyeglasses for various VA medical centers in Pennsylvania, New Jersey, Delaware and West Virginia. Following an initial evaluation and source selection, a protest was filed; in response to that protest, the agency re-opened the procurement, amended the solicitation, and sought revised proposals.

As amended, the solicitation required that offerors propose fixed “all-inclusive” unit prices for estimated quantities of prescription eyeglasses during a base performance period and four 1-year option periods. Agency Report, Tab 4, at 4-5. The solicitation identified various requirements the successful offeror will be required to perform, including the following: “The Contractor must have web capabilities that will allow VA Medical Centers and Outpatient Clinics to access and check status of orders on line.” Agency Report, Tab 23, at 10-A.

Offerors were required to submit technical proposals that addressed various aspects of their capabilities to perform the contract requirements, and the solicitation provided that source selection would be based on a comparative evaluation of offerors’ proposals, considering past performance, technical capabilities, and price. Agency Report, Tab 23, at 29-32. With regard to technical proposals, the solicitation stated: “Each Offeror shall submit a written Technical Proposal for evaluation which must provide sufficient information to demonstrate corporate capabilities to satisfactorily perform the work involved.” Agency Report, Tab 23, at 29. Similarly, under the heading “Technical Capabilities, the solicitation provided, “[t]he offeror must possess[,] or be able to sub-contract for, all facilities and resources necessary to perform the [contract] requirements.” Agency Report, Tab 23, at 32. With regard to evaluation of technical capabilities, the solicitation established the following equally-weighted evaluation factors: facilities (including “resources utilized to accomplish requirements”); organizational experience; management approach; and key personnel. Agency Report, Tab 23, at 30-32.

Eleven offerors, including Korrekt and Rochester submitted proposals by the specified closing date. Following review and evaluation of those proposals, the agency established a competitive range consisting of the proposals submitted by Rochester, Korrekt, and two other offerors.¹ By letters dated October 20, the agency provided written discussion questions to both Rochester and Korrekt, and sought final revised proposals. Each of these letters contained, among other things, the following paragraph:

To facilitate the evaluation process, and to assist the Government in identifying or determining perceived benefits, briefly summarize (or re-summarize) your firm[']s capabilities with regard to the following:

- (a) On-line (Internet) order status-tracking capabilities.
- (b) Capabilities to receive orders via facsimile, e-mail or telephone.
- (c) Order turn-around/delivery time.
- (d) Provision of on-site training.

¹ The proposals submitted by the two competitive range offerors other than Rochester and Korrekt are not relevant to Rochester’s protest; accordingly, they are not further discussed.

- (e) Ability to accept the Government Purchase Card for payment.
- (f) Level 2 Credit Card Processing Capabilities.
- (g) Type of packaging used for shipment of eyeglasses (i.e., box, padded envelope, bubble-pack, etc).

Agency Report, Tab 8, at 2,-3, 6-7.

In response to the discussion question regarding “On-line (Internet) order status-tracking capabilities,” Korrekt’s revised proposal stated:

Korrekt Optical will be using [deleted] software for this contract. This allows authorized users to use the Internet for order status/tracking information. This [deleted] requires no [deleted] or [deleted] on the V.A. end. It will take about [deleted] to set up this function at Korrekt Optical. Each authorized user will [deleted]. This will be a [deleted] from [deleted] to the [deleted] on your computer. All orders for “XX” days and/or individual orders by invoice number, veteran name, PO #, etc. can be viewed.

Agency Report, Tab 10, at 2.

In evaluating Korrekt’s and Rochester’s final proposals with regard to technical capabilities, the agency assigned each proposal a score of [deleted], out of a possible 40, points. Agency Report, Tab 25, at 2. Overall, the agency concluded that Korrekt’s and Rochester’s proposals were [deleted] with regard to all of the non-price evaluation factors. Agency Report, Tab 13, at 4. With regard to price, Korrekt proposed a per-unit price of [deleted] for each contract period; Rochester proposed a per-unit price of [deleted] for each contract period.² Agency Report, Tab 29, at 2. Based on the agency’s determination that the proposals submitted by Korrekt and Rochester were [deleted], Korrekt’s proposal was selected for award based on its [deleted]. This protest followed.

Rochester does not challenge any aspect of the agency’s source selection process other than the evaluation of Korrekt’s proposal with regard to the solicitation requirement that “[t]he [c]ontractor must have web capabilities that will allow VA . . . to access and check status of orders on line.” Agency Report, Tab 23, at 10A. With regard to this requirement, Rochester maintains that the agency was required to assess whether Korrekt proposed an on-line system that was “functioning” and

² Total evaluated prices were determined by applying the proposed prices, by contract period, to the estimated quantities provided in the solicitation, and summing the results for all contract periods. Applying this methodology, Korrekt’s total evaluated price was [deleted]; Rochester’s total evaluated price was [deleted]. Agency Report, Tab 29, at 2.

“demonstrable” at the time proposals were evaluated, complaining that Korrekt never actually demonstrated its proposed system to the agency.³ Protest at 6.

Because the evaluation of proposals is a matter within the discretion of the contracting agency, we will not reevaluate proposals, but will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s evaluation criteria and applicable statutes and regulations. Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 6. In this regard, an offeror’s mere disagreement with the agency’s evaluation does not render the evaluation unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

Here, it is clear that, contrary to Rochester’s assertion, the solicitation did not require an offerors’ on-line ordering and order tracking system to be “functioning” and “demonstrable” prior to award. To the contrary, as discussed above, the solicitation specifically provided that the agency would assess the offerors’ “capabilities” to perform the requirements.⁴ Agency Report, Tab 23, at 29-32. As also discussed above, Korrekt’s proposal specifically addressed its capabilities to perform the on-line ordering and tracking requirements, identifying the particular software it intended to employ, describing how and when the system would be installed, and summarizing the procedures agency personnel would use to access the system. Based on this information, the agency concluded that Korrekt would meet the contract requirements; Rochester’s protest fails to identify any aspect of Korrekt’s

³ Rochester’s protest to our Office was filed within 10 days after the agency denied Rochester’s similar, agency-level protest; accordingly, issues raised in the agency-level protest are timely under our Bid Protest Regulations. 4 C.F.R. 21.2(a)(3) (2003). In its protest to our Office, Rochester, for the first time, characterizes the requirement for on-line ordering/tracking as a “definitive responsibility criteria.” Since this assertion was not raised in Rochester’s agency-level protest, it is not timely filed. In any event, definitive responsibility criteria are specific and objective standards, established in a solicitation to measure an offeror’s ability to perform a contract. See, e.g. AT&T Corp., B-260447.4, Mar. 4, 1996, 96-1 CPD ¶ 200 at 5. To be a definitive responsibility criterion, offerors must be reasonably informed that compliance with the standard is a precondition for award. Id. Here, the solicitation did not require that offerors demonstrate the existence of a functioning on-line ordering system as a precondition for award; rather the on-line ordering and tracking requirements are merely performance obligations, enforceable by the agency as a matter of contract administration. See AJT & Assocs., Inc., B-284305, B- 284305.2, Mar. 27, 2000, 2000 CPD ¶ 60.

⁴ As noted above, the solicitation provided that technical proposals “must provide sufficient information to demonstrate corporate capabilities” and, similarly, that offerors “must possess, or be able to sub-contract for,” the required resources to perform the contract requirements. Agency Report, Tab 23, at 29, 32.

proposed approach that is technically flawed, infeasible, or otherwise unreasonable. On this record we find no basis to question the agency's evaluation.

The protest is denied.

Anthony H. Gamboa
General Counsel