



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Service Technology, Inc.
File: B-255075
Date: February 4, 1994

John A. Mason, President, American Service Technology, Inc.,
Protester
Robert C. Peterson, Esq., and Eric A. Lile, Esq., Department
of the Navy, for the agency
Shirley A. Jones, Esq., and Rachel DeMarcus, Esq., Office of
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protester's allegation that contracting agency improperly
evaluated its proposal is denied where record shows that the
agency reasonably evaluated the proposal under each of the
solicitation's evaluation criteria.

DECISION

American Service Technology, Inc. (ASTI) protests the award
of a contract to the American Council on Education (ACE)
under Solicitation No. N000612-93-R-0301, issued by the
Department of the Navy as a negotiated procurement to manage
the Military Installation Voluntary Education Review (MIVER)
Program on behalf of the Defense Activity for Non-
Traditional Education Support (DANTES) in Pensacola,
Florida. ASTI argues that as the low offeror it should have
received the award. The protester also challenges the
agency's evaluation of its proposal.

We deny the protest.

The solicitation was issued on July 10, 1993, for a contract
to manage the MIVER Program for a base year and two option
years on a cost plus fixed fee basis. The MIVER Program is
a continuing program which had been previously managed by
the incumbent, ACE. The primary purpose of the program is
to assess the quality of voluntary education provided on
military bases.

The solicitation advised that award was intended to be made
on initial proposals to the offeror whose offer was found to
be the most advantageous to the government, cost and other
factors considered. The solicitation included FAR clause

52,215-16 Alternate III, to that effect. The solicitation also advised offerors that the Other Factors segment of the offer was significantly more important than cost.

Concerning the evaluation of technical proposals, the solicitation provided the following four factors that the offerors should address in their technical proposals. These factors, listed in descending order of importance, were as follows: (1) Experience with educational institutions and organizations in establishing educational policy and standards, program development, and quality assessment; (2) Knowledge of post-secondary military voluntary educational programs, including non-traditional educational programs; (3) Management Plan; and (4) Membership in nationally-recognized professional education organizations.

Two offers were received, one from ASTI and one from the incumbent ACE. The agency established a four member evaluation panel consisting of representatives from the Army, Navy, Air Force and Marine Corps, to evaluate and point score the proposals.

The evaluation panel concluded that ASTI did not submit an acceptable technical proposal. Out of a possible score of 145, ASTI received a score of 34.2 or 23.6% of the total possible points. The protester's score was significantly lower than that of the incumbent. Accordingly, the panel unanimously concluded that ASTI's proposal was unacceptable and not susceptible of being made acceptable.

ASTI first notes that despite its lower cost, ACE was awarded the contract. ASTI did in fact offer the lowest proposal cost to the Navy. However, where a proposal is technically unacceptable, it is appropriate to exclude the proposal from competition irrespective of its lower proposed price. Benmol Corporation, B-251586, Apr. 16, 1993, 93-1 CPD ¶ 325; Reconsidered, B-251586.2, June 22, 1993, 93-1 CPD ¶ 480.

Secondly, ASTI notes that it was not asked for clarifying or supplemental information. We have consistently held that the contracting agency is not obligated to conduct discussions where the proposal is technically unacceptable and had no reasonable chance for award. DO3 Systems, Inc., B-250438.3, April 19, 1993, 93-1 CPD ¶ 330.

In its comments on the agency report, ASTI argued that the agency's evaluation factors and descending order of importance were not reasonable or were inconsistent. The protester argued that the evaluation had nothing to do with the quality of the proposal, rather it depended on a "mixed up quantitative evaluation process." As noted previously, however, the solicitation specifically advised offerors that

their technical proposal would be evaluated based on the four factors listed in the solicitation in descending order of their relative importance. Consequently, such alleged improprieties must, therefore, should have been protested prior to the time set for receipt of initial proposals. American Indian Law Center, Inc., B-254322, December 9, 1993, 93-2, CPD ¶ ____.

ASTI also broadly asserts that the overall evaluation plan must have been applied incorrectly to its proposal. In reviewing protests of allegedly improper evaluations, we will not, however, reevaluate proposals. Rather, the evaluation of proposals is within the discretion of the contracting agency, since it is responsible for defining its needs and for deciding on the best method of accommodating these needs. Benmol Corporation, supra. We will examine the record to determine whether the evaluator's judgments were reasonable and in accord with the listed criteria. In that regard, an agency may reasonably find a proposal technically unacceptable where the proposal contains so many deficiencies that it could only be made acceptable with major revisions. A protester's mere disagreement with the agency does not render the evaluation unreasonable. Id.

According to the solicitation, each offeror's technical proposal was to be sufficiently specific, detailed and complete to demonstrate an understanding of the contract's requirements and that such requirements would be satisfied. In evaluating ASTI's proposal, the evaluators found that ASTI's proposal generally showed a lack of understanding of the purpose and intent of the contract as well as its inability to deliver the required programs.

Under the most important factor, experience with educational institutions and organizations in establishing educational policy and standards, program development, and quality assessment, the evaluators found no evidence that the offeror had any such experience and apparently little understanding of voluntary education programs in a base setting. ASTI did not provide any evidence to rebut this finding.

Regarding the second factor, the evaluators found no evidence of a clear understanding or knowledge of post-secondary military voluntary education programs. In fact the evaluators concluded that the proposal and cited documentation reflected a very narrow perception of education on military installations. ASTI did not provide any evidence to rebut this finding.

With regard to the third factor, management plan, the evaluators also found a lack of understanding of the


solicitation's requirements and found that its planned use of Service academy personnel would involve a conflict of interest and would not be appropriate. ASTI did not provide any evidence to rebut this finding.

With regard to the fourth and final factor, membership in nationally-recognized professional educational organizations, the evaluation panel concluded that the professional associations cited by the protester were not at the higher education level and, therefore, did not lend credibility to its proposal. With regard to this factor only, the protester argued in its initial protest that its proposal should have been in the same range as the incumbent.¹ The agency responds that the incumbent's proposal, unlike the protester's, showed direct and regular contact with the major American educational associations and evidenced direct ties with all types of higher education institutions and organizations.

As detailed above, the record shows that the Navy conducted the evaluation in accord with the listed criteria and reasonably found numerous deficiencies in the protester's proposal. Thus, we conclude that the agency had a reasonable basis to determine ASTI's proposal unacceptable.

The protest is denied.



 Robert P. Murphy
Acting General Counsel

¹Without further explanation, the protester asserted in its initial protest that its score with regard to this factor should have been in the same range as the incumbent's because of the incumbent's use of subcontractors on this factor. The solicitation, however, did not prohibit the use of a subcontractor. We further note that the protester failed to further address this issue in its comments on the agency report.