



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dayron

File: B-265875.2

Date: January 11, 1996

V. Keith Young, Esq., for the protester.

John B. Denniston, Esq., Covington & Burling, for Intellitec, Division of Technical Products Group, Inc., an interested party.

David P. Harney, Esq., and Barry R. Dean, Esq., Department of the Army, for the agency.

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DIGEST

Contracting officer reasonably selected proposal with a higher technical rating and higher evaluated price for award where he reasonably determined that proposal's technical advantages justified the evaluated price premium and the evaluation scheme provided that technical evaluation factors were considered significantly more important than price in selecting the proposal representing the best overall value to the government.

DECISION

Dayron protests the award of a contract to Intellitec, Division of Technical Products Group, Inc., under request for proposals (RFP) No. DAAE30-95-R-0008, issued by the United States Army Materiel Command, Department of the Army, for the production of quantities of M139 Volcano Mine Dispensers, mounting kits, maintenance self-testers, and ancillary equipment. Dayron protests the evaluation of its proposal and the contracting officer's price/technical tradeoff.

We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract for basic and option line item quantities to the responsible offeror whose proposal was deemed to represent the best overall value to the government, technical evaluation factors, performance risk assessment, and price considered. The technical evaluation factors were comprised of four minimum standards criteria, which were to be

evaluated using adjectival ratings of "unacceptable" or "acceptable," and three merit rated criteria, which were to be evaluated using adjectival ratings of "unacceptable," "acceptable," or "outstanding." Adjectival ratings were to be supported by narratives. The performance risk assessment, based upon an offeror's and its proposed subcontractor's past performance of related contract efforts as an indicator of the probability of successful contract performance, was to be evaluated using a narrative. Prices were to be evaluated by adding prices for the maximum quantity of basic and option line items. In addition, the RFP provided for a 10-percent evaluation preference for small disadvantaged businesses (SDB), whereby 10 percent would be added to the total price (for evaluation purposes only) of all non-SDBs prior to the source selection decision.

Under the RFP, the technical evaluation factors were considered significantly more important than the performance risk assessment which was considered slightly more important than price. In addition, the merit rated criteria were considered significantly more important than the minimum standards criteria. Of the three merit rated criteria, the shipping and storage containers criterion was considered significantly more important than the other two equally weighted criteria. In determining the best overall value to the government, the RFP stated that the agency reserved the right to award to other than the low-priced offeror or to the highest-rated offeror for the technical evaluation factors and the performance risk assessment.

Six firms, including Dayron, an SDB, and Intellitec, a non-SDB, submitted initial proposals. The contracting officer included the proposals of Dayron, Intellitec, and three other firms in the competitive range and subsequently conducted discussions with each competitive range offeror. Following discussions, each competitive range offeror submitted a best and final offer (BAFO). For the technical evaluation factors, both Dayron and Intellitec were rated "acceptable" for the minimum standards criteria and for the two equally weighted merit rated criteria; however, for the significantly more important shipping and storage containers merit rated criterion, Intellitec was rated "outstanding," while Dayron was rated "acceptable." Both firms were considered to be low risk in terms of performance. Dayron's price was \$36,316,192, and Intellitec's price was \$33,532,720. After application of the 10-percent SDB evaluation preference to Intellitec's price, Intellitec's price was evaluated at \$36,885,992, \$569,800 higher than Dayron's price.¹ The contracting

¹Upon being notified of award, Dayron questioned the contracting officer concerning the application of the 10-percent SDB evaluation preference. The contracting officer admitted that the SDB preference had not been added to Intellitec's price for evaluation purposes. At that point, the contracting officer effectively took corrective action by reevaluating Intellitec's price with the SDB preference and

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officer awarded a contract to Intellitec as the offeror whose proposal was deemed to represent the best overall value to the government.

Dayron protests the evaluation of that portion of its technical proposal which addressed the shipping and storage containers merit rated criterion. Dayron contends that in evaluating it as "acceptable," as opposed to "outstanding," the technical evaluators "ignor[ed] the clearly superior capabilities of [its] subcontractor." In this regard, Dayron states that its subcontractor's "facilities, technical personnel, and the depth and breadth of [its] manufacturing experience dwarf that of any competitor, including Intellitec."

In reviewing protests against the propriety of an agency's evaluation of proposals, we will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129; Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93.

Under the RFP, the shipping and storage containers criterion was comprised of four sub-criteria, requiring each offeror to provide a narrative description of the firm's or its proposed subcontractor's "expertise," defined as work experience, training of personnel, and manufacturing methods and processes, in efforts of comparable complexity to the requirements of the RFP; in resin transfer molding process control areas; in preparation of glass kit schedules; and in the management of shipping and storage container fabrication stages on the production floor. This criterion was considered significantly more important than the other two merit rated criteria.

Dayron proposed to subcontract the production of shipping and storage containers to a joint venture which was formed in 1989 between a company with advanced materials expertise and a company with composite parts development and manufacturing experience. Dayron characterized its subcontractor as the "industry leader" in resin transfer molding technology, one aspect of the shipping and storage containers criterion. Dayron also characterized its subcontractor's aerospace and

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revising his source selection decision in light of the evaluated price differential after application of the SDB preference. See Information Sys. Networks, Inc., B-254384.3, Jan. 21, 1994, 94-1 CPD ¶ 27 (where initial protest that the agency failed to apply the 10-percent SDB evaluation preference was dismissed based on the agency's taking corrective action; subsequent protest focused on the agency's revised determination of which proposal represented the best overall value to the government, accounting for the evaluated price differential after application of the SDB preference).

commercial automotive component fabrication experience as "similar" to the RFP requirements for production of shipping and storage containers. Dayron further provided information on its subcontractor's investments in research and development efforts which it stated "may be selectively applied" to the requirements of the RFP.

In evaluating Dayron's proposal for the shipping and storage containers criterion as "acceptable," the evaluators determined that Dayron "comple[d] with the requirements of this [criterion]." More specifically, the evaluators concluded that Dayron's proposed subcontractor had adequate prior expertise and experience in fabricating large, complex aerospace and automotive components, but noted that its subcontractor did not have experience in producing shipping and storage containers. The evaluators determined that Dayron provided an excellent, detailed narrative addressing training and certification of resin transfer molding operators; experience and capability with resin transfer molding processes; and handling, property, and storage control, shrinkage control, gel coat processes, and stability control. The evaluators believed that Dayron understood the requirements for glass kit schedules and that it addressed glass fiber handling, control, and storage. Finally, the evaluators determined that Dayron provided adequate responses to molding processes and general fabrication plans, but noted that Dayron's narrative was not detailed in the area of secondary operations for installation of internal cushions and internal and external hardware.

We think Dayron's proposal was reasonably evaluated as "acceptable" for the shipping and storage containers criterion. Dayron made a decision to subcontract this requirement, which we believe indicates, and the firm does not argue otherwise, that Dayron itself had no previous experience in producing shipping and storage containers. Dayron further admits that its subcontractor had no previous experience in producing such containers. Under these circumstances, we have no basis to conclude that the "acceptable" rating assigned to Dayron's proposal--which was based on Dayron's subcontractor's demonstrated expertise and experience in producing large, complex aerospace and automotive components and on Dayron's proposed approach for performing requirements involving resin transfer molding, glass kit schedules, and shipping and storage container fabrication stages--was other than reasonable.

Dayron also contends that Intellitec's rating of "outstanding" for the shipping and storage containers criterion reflects an unfair competitive advantage resulting from the technical evaluators' consideration of the firm's experience as the incumbent contractor. For example, Dayron states that as the incumbent, Intellitec had knowledge of problems encountered during performance of prior contracts, which gave Intellitec a "unique ability to elaborate on issues unknown to other [offerors] and which never would have been a problem [for Dayron's subcontractor]." Dayron

believes that Intellitec's performance as the incumbent should have been considered only in the context of assessing performance risk, not as part of the evaluation of Intellitec's technical approach for satisfying the requirements of the RFP.

The RFP required each offeror to provide a narrative description of its own or its subcontractor's experience in producing shipping and storage containers. As previously discussed, neither Dayron nor its proposed subcontractor had experience in producing these containers. On the other hand, Intellitec did have such experience as the incumbent.

The RFP clearly contemplated the evaluation of an offeror's experience in producing shipping and storage containers. Obviously, the evaluation of Intellitec's relevant incumbent experience in this regard was reasonably encompassed by the terms of the RFP and for this reason, did not represent an unfair competitive advantage to the firm. A competitive advantage of an offeror, like Intellitec, which is gained through incumbency, is generally not an unfair advantage which must be eliminated. Versar, Inc., B-254464.3, Feb. 16, 1994, 94-1 CPD ¶ 230. Incumbent contractors with good performance records can offer real advantages to the government, and proposal strengths flowing from a firm's prior experience may properly be considered by an agency in proposal evaluation. Id. There is no question that Intellitec had relevant incumbent experience; in fact, Dayron does not challenge the underlying conclusions of the technical evaluators that there were significant technical advantages inherent in Intellitec's proposal stemming from that experience as the incumbent. We conclude that in evaluating Intellitec's technical approach for satisfying the requirements of the RFP, the technical evaluators reasonably considered Intellitec's relevant incumbent experience.²

Dayron next argues that the contracting officer failed to conduct meaningful discussions as required by Federal Acquisition Regulation § 15.610, see Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306, concerning the shipping and storage containers criterion, and more specifically, the contracting officer's belief that Dayron had not demonstrated the superiority of its technical

²We note that Dayron and Intellitec were both considered to be low risk in terms of performance based upon the review by the agency's performance risk assessment group of the offerors' past performance on related contract efforts.

In addition, contrary to Dayron's assertion, the record shows that an offeror's technical proposal and past performance proposal were independently evaluated by the technical evaluators and the performance risk assessment group, respectively. There is no evidence in the record which suggests that the evaluation of an offeror's past performance crossed over to the evaluation of an offeror's technical approach for satisfying the requirements of the RFP.

proposal for this criterion for purposes of receiving an "outstanding" rating. Dayron's argument is not supported by the record.

During discussions, the contracting officer advised Dayron of the adjectival ratings assigned to each area of its technical proposal, including those areas which were considered deficient, as evidenced by "unacceptable" ratings. As relevant here, the contracting officer advised Dayron that its proposal was rated overall "acceptable" for the shipping and storage containers criterion and "acceptable" for each of the four sub-criteria. The contracting officer noted no deficiencies in Dayron's proposal for this criterion and advised Dayron that in order to obtain a rating higher than "acceptable," *i.e.*, "outstanding," for any of the merit rated criteria, the firm, in accordance with the terms of the RFP, would have to demonstrate superiority and explain how that superiority provided value to the government. In its BAFO, Dayron revised those areas of its initial proposal which had been considered deficient or "unacceptable," but did not address any areas, including the shipping and storage containers criterion, which had been rated "acceptable." Dayron's final rating for this criterion remained "acceptable."

Based on this record of discussions, we believe the contracting officer reasonably placed Dayron on notice that unless it demonstrated in its BAFO superiority with respect to the RFP's merit rated criteria and explained how that superiority translated into value to the government, its ratings for these criteria would not be higher than "acceptable." Dayron did not attempt to improve upon those areas of its proposal initially rated "acceptable." Under these circumstances, we fail to see how Dayron can characterize its final "acceptable" rating for the shipping and storage containers criterion as resulting from a lack of meaningful discussions.

Finally, Dayron challenges the contracting officer's price/technical tradeoff which resulted in the award to Intellitec, a higher technically rated, higher evaluated price offeror. Specifically, Dayron argues that a price/technical tradeoff to determine the offeror whose proposal represented the best overall value to the government is inconsistent in the context of applying an SDB evaluation preference. Dayron maintains that award under an RFP which includes an SDB evaluation preference should be made to the low-priced, technically acceptable SDB, as opposed to a non-SDB with a higher evaluated price and higher technical rating.

The contracting officer's tradeoff, however, was consistent with the RFP, which provided for both the application of the SDB evaluation preference and a best value (price/technical tradeoff) determination. Thus, the challenge effectively is that the RFP was defective on its face. Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing

time for receipt of initial proposals must be filed prior to that closing time. 4 C.F.R. § 21.2(a)(1) (1995); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. In this case, Dayron's argument, raised after award, is untimely.

The protest is denied.

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