



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Chek F. Tan & Company

File: B-277163

Date: September 8, 1997

Laurence P. Lubka, Esq., Hunt, Ortmann, Blasco, Palffy & Rossell, Inc., for the protester.

John J. Finnerty for International Management, Development, and Training, Inc., an intervenor.

Bernard Roan, Esq., and Thomas W. Berndt, Esq., National Aeronautics & Space Administration, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer reasonably selected for award the proposal with a higher technical rating and higher evaluated cost where she determined that the proposal's technical advantages justified the payment of an evaluated cost premium, and the solicitation's evaluation scheme provided that the mission suitability evaluation factor and an offeror's evaluated cost were most important and that an offeror's relevant experience and past performance was somewhat less important in selecting the most advantageous proposal to the government.

DECISION

Chek F. Tan & Company protests the award of a contract to International Management, Development, and Training, Inc. (IMDT) under request for proposals (RFP) No. 2-35974(TLS), issued by the Ames Research Center, National Aeronautics & Space Administration, for financial and accounting services. The protester challenges the evaluation of its proposal and the award to a higher technically rated, higher evaluated cost offeror.

We deny the protest.

The RFP was issued on November 26, 1996, and contemplated the award of a cost-plus-fixed-fee contract for the base period and four 1-year option periods to the offeror whose proposal was determined most advantageous to the government, mission suitability, cost, and relevant experience and past performance considered.

The mission suitability evaluation factor was comprised of the following three subfactors and related elements: (1) understanding the requirement (technical understanding; staffing and training plan, replacement, and backup; and total compensation plan for professional employees), (2) management plan (organizational structure/management approach and phase-in/phase-out plan), and (3) corporate/company business. These subfactors and related elements were weighted and scored in accordance with the numerical scheme described in the RFP under which an offeror could receive up to a total of 1,000 points for the mission suitability evaluation factor. The mission suitability portion of an offeror's proposal also received an overall adjectival rating (excellent, very good, good, fair, and poor). An offeror's proposed cost, including the offeror's total compensation plan for professional employees, was evaluated in terms of the probable or expected cost to the government of the offeror performing the contract. Finally, an offeror's overall corporate experience and past performance was evaluated to determine how well the offeror could be expected to perform the current requirements. Relevant experience and past performance was evaluated by assigning adjectival ratings (same as those set out above). In determining the offeror whose proposal was most advantageous to the government, the RFP stated that the mission suitability evaluation factor and an offeror's evaluated cost (which were approximately equal in importance to each other) were most important, and that an offeror's relevant experience and past performance was somewhat less important than either mission suitability or cost.

Five firms, including the protester, the incumbent contractor for more than 8 years, and IMDT, submitted initial proposals. The agency included the proposals of the protester and IMDT in the competitive range and subsequently conducted written and oral discussions with these two competitive range offerors. During discussions, the agency identified weaknesses in each offeror's proposal, linking these weaknesses to specific RFP provisions. Following discussions, the protester and IMDT submitted best and final offers.

For the mission suitability evaluation factor, out of a possible 1,000 points, the protester's proposal received 501 points and an overall "fair" rating, and IMDT's proposal received 741 points and an overall "very good" rating. These scores were supported by narratives of the major and minor strengths and weaknesses in each offeror's proposal. The protester's evaluated cost was approximately 6 percent less than IMDT's evaluated cost. The protester received a "very good" rating for relevant experience and past performance based on its performance as the incumbent contractor. IMDT, which had experience which was not directly relevant to providing financial support services (e.g., training, security technology, and technical support services, including database management, maintenance, and administration), received a "good" rating for relevant experience and past performance because its proposed subcontractor had experience preparing training courses that specifically related to financial systems and procedures at the Ames Research Center.

The contracting officer, who served as the source selection authority, determined that IMDT's higher evaluated cost proposal was technically superior to the proposal submitted by the protester based on the firm's higher score for the mission suitability evaluation factor and its "good" rating for relevant experience and past performance. Accordingly, the contracting officer determined that IMDT's technically superior proposal was most advantageous to the government and that this technical superiority justified the payment of an evaluated cost premium to IMDT.

The protester contends that in downgrading its proposal for the mission suitability evaluation factor, the agency improperly considered unstated criteria, for example, health and welfare benefits, overtime, and bonus plans. The protester maintains that these benefits were cost-related and only should have been considered in evaluating its proposed cost. We disagree, since the protester's position is not supported by the record.

The RFP provided that an offeror's total compensation plan for professional employees would be considered not only in evaluating an offeror's proposed cost, but also as a related element under the understanding the requirement subfactor of the mission suitability evaluation factor. More specifically, the RFP required an offeror to provide a compensation plan for professional employees setting forth "salaries and fringe benefits" proposed for these employees. The RFP required the offeror to "describe the impact that the proposed compensation will have on recruiting and retaining professional employees." The RFP stated that an offeror's compensation plan would be evaluated to determine the offeror's understanding of the requirements of the work to be accomplished and the suitability of the proposed compensation structure to obtain and retain qualified personnel to meet mission objectives. Consistent with the terms of the RFP, the protester's narrative description of its compensation plan, included as part of its technical proposal, was properly evaluated under the mission suitability evaluation factor for the purpose of determining the protester's understanding of the requirements of the RFP and the effect its proposed compensation plan would have in terms of recruiting and retaining professional employees.

The evaluation record further shows that the agency downgraded the protester's proposed compensation plan because it was not satisfied with the protester's explanation for basing the health and welfare benefit on a percentage of an employee's gross pay, for paying overtime to arguably exempt professional employees, and for having two bonus pools. The agency considered the unsatisfactory explanations of these proposed benefits to be the single major weakness of the protester's technical proposal under the mission suitability evaluation factor. In its protest, the protester does not challenge the substantive evaluation conclusions but rather maintains that it proposed its historic compensation plan, which is "not always susceptible to a detailed and attractive

explanation of its basis," but has "resulted in high retention and reasonable costs" as reflected by its performance of the predecessor contract.

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. Dayron, B-265875.2, Jan. 11, 1996, 96-1 CPD ¶ 10 at 3.

The RFP specifically notified offerors that they "should not assume that the evaluation team is aware of [their] abilities, capabilities, plans, facilities, organization or any other pertinent fact that is important to accomplishment of work." The RFP also warned that offerors "should assume that the evaluation will be based primarily on the information presented (or referenced) in the written proposal. Each listed evaluation subfactor/element should be specifically addressed." In determining whether an offeror proposed to fairly and properly compensate its professional employees, which was expressly recognized in the RFP as being in the government's best interests, the RFP stated that the agency would evaluate an offeror's compensation plan to ensure that it "reflects a sound management approach and understanding of the contract requirements."

In light of these RFP provisions, the protester was required to address the agency's concerns with its proposed compensation plan, as pointed out by the agency during written and oral discussions by noting the weaknesses in its proposal with reference to specific provisions of the RFP, or run the risk of being downgraded for failing to provide information necessary to fully evaluate its plan under the mission suitability evaluation factor as described above. The protester does not dispute that it did not provide a full explanation of its proposed health and welfare benefit, overtime, and bonus pools, and essentially admits that it did not provide a "detailed and attractive explanation" of these benefits. Accordingly, consistent with the terms of the RFP, we think the agency reasonably downgraded the protester's compensation plan for failing to provide supporting details which demonstrated that the firm's plan reflected a sound management approach and that the firm understood the contract requirements.¹

¹The protester asserts that by requiring a detailed rationale for its compensation plan, as opposed to recognizing that the protester proposed its historic benefits package, the agency actually was requesting that the protester reduce the amounts to be paid to professional employees. The protester's assertion is not supported by the record. In this regard, such a request from the agency would have been inconsistent with the express terms of the RFP cautioning offerors that "instances of lowered compensation for essentially the same professional work may be considered a lack of sound management judgment in addition to indicating a lack of understanding of the requirement."

To the extent the protester argues that the agency should have discounted its failure to provide a full explanation in its technical proposal of its compensation plan because as the incumbent contractor it was rated "very good" for relevant experience and past performance, and therefore, the agency was aware that it had no prior performance problems in terms of recruiting and retaining professional employees based on the compensation it historically paid to these employees, its argument is simply without merit.

The protester fails to recognize that the agency did not downgrade its proposed compensation plan because it was based on amounts historically paid by the protester under the predecessor contract. Rather, the agency objected that the protester failed to adequately explain the rationale for various aspects of its plan in its proposal and therefore failed to demonstrate a complete understanding of the RFP requirements. Even though the protester performed successfully as the incumbent contractor, as evidenced by its "very good" rating for relevant experience and past performance, the RFP expressly advised that an offeror should not assume that the evaluation team was aware of its overall abilities to perform the contract and that the evaluation would be based primarily on the information in the offeror's written proposal. In other words, the agency was not required to give an offeror like the protester credit for information not included in its proposal. Since under the terms of the RFP the protester was responsible for providing a full discussion of its technical approach and methodology within the four corners of its proposal, the protester must suffer the consequences of its failure to do so, that being the agency's downgrading of its proposal for failing to demonstrate in this document its understanding of the RFP requirements. See Wyle Labs., Inc., B-260815.2, Sept. 11, 1995, 95-2 CPD ¶ 187 at 5.

Finally, the protester challenges the agency's decision to award to IMDT at a higher evaluated cost because the firm does not have relevant experience in performing financial and accounting services.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost results. Cost/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. See Gardiner, Kamy & Assocs., P.C., B-253805, Oct. 13, 1993, 93-2 CPD ¶ 223 at 5. Awards to offerors with higher technical scores and higher costs are proper so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determines that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. Id.

Regarding the protester's challenge of the agency's evaluation of IMDT's experience and past performance, we point out that, while the agency recognized that IMDT

itself did not have direct relevant financial and accounting experience (although it had nine other government contracts), the record shows that the firm's proposed subcontractor specialized in financial resources training, financial systems analyses, and training and cost center development and operation in support of the Ames Research Center. The agency believed that IMDT, based on its other contracts and as teamed with its proposed subcontractor, demonstrated relevant experience and past performance for which it received a "good" rating. We also point out that the RFP did not contain restrictions on subcontracting and in fact, in the answers to pre-proposal questions contained in amendment No. 1 to the RFP, the agency stated that subcontracting was permitted.

In this case, the RFP stated that the mission suitability evaluation factor and an offeror's evaluated cost were most important and that an offeror's relevant experience and past performance was somewhat less important in determining the most advantageous proposal to the government. Although IMDT's evaluated cost was 6 percent higher than the protester's evaluated cost, the contracting officer determined that IMDT's proposal was technically superior to the protester's proposal for the mission suitability evaluation factor. The protester does not challenge the underlying evaluation of IMDT's proposal, and we have confirmed through our review of the record the reasonableness of the contracting officer's conclusion that IMDT's proposal was technically superior to the protester's proposal.

For example, the source selection record shows that IMDT demonstrated an excellent understanding of, and approach for accomplishing, the financial and accounting requirements of the RFP. IMDT furnished an extensive and thorough description of its management procedures for planning, directing, prioritizing, controlling, and reporting work functions and of its training plan. IMDT described in a detailed and organized manner the budget and funding processes. IMDT presented a complete and concise plan for replacement and back-up of non-key personnel. IMDT furnished a complete and thorough recruiting and hiring plan and fringe benefits package. IMDT explained in a comprehensive, organized format its quality assurance procedures, including total quality management elements from initially understanding the requirements to following-up with the client.

In contrast, the source selection record supports the agency's conclusion that the protester failed to provide a complete description of its total compensation plan, particularly its fringe benefits package. As discussed above, the agency concluded that this failure constituted the single major weakness in the firm's technical proposal under the mission suitability evaluation factor. In addition, the record supports the agency's conclusion that the protester did not furnish a detailed and thorough staffing and training plan for cross-utilization of personnel, back-up of non-key personnel, and career development, and it did not provide a sufficient rationale for selecting key personnel positions. Further, the record shows that the protester did not include in its training plans specific courses addressing the

technical requirements of the RFP and provided only a cursory description of management procedures for planning, directing, prioritizing, controlling, and reporting work functions.

In short, the record supports the contracting officer's conclusion that IMDT's proposal was technically superior to the protester's proposal under the mission suitability evaluation factor.

In addition, the contracting officer noted the protester's successful performance as the incumbent contractor for more than 8 years for which it received a "very good" rating for relevant experience and past performance. The contracting officer also recognized the "good" rating assigned to IMDT for relevant experience and past performance based on its other government contracts and its teaming with an experienced subcontractor.

The contracting officer concluded that despite IMDT's higher evaluated cost vis-a-vis the protester's evaluated cost, IMDT's proposal represented the best value to the government based on its technically superior mission suitability proposal and its relevant experience and past performance gained through the experience of its proposed subcontractor. Consistent with the evaluation and source selection scheme described in the RFP, we have no basis to object to the contracting officer's conclusion that IMDT's technically superior proposal was most advantageous to the government and that this technical superiority justified the payment of an evaluated cost premium to IMDT.²

The protest is denied.

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²Other than the fact that it successfully performed as the incumbent contractor, the protester does not explain why it should have received an "excellent" rating for relevant experience and past performance. In any event, there is nothing in the record which indicates that an "excellent" rating for a less important evaluation factor would have changed the contracting officer's cost/technical tradeoff.