



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** For Your Information, Inc.

**File:** B-278352

**Date:** December 15, 1997

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Edward V. Gregorowicz, Jr., Esq., and Frederick P. Hink, Esq., for the protester. James K. Kearney, Esq., Scott D. Chaplin, Esq., and Theodore W. Atkinson, Esq., Reed Smith Shaw & McClay, for RGII Technologies, Inc., an intervenor. Kimberly A. Kegowicz, Esq., U.S. Coast Guard, for the agency. Henry J. Gorczycki, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

In a negotiated procurement for services, a proposal that offers personnel that do not satisfy the solicitation's personnel qualification requirements is unacceptable and may not properly form the basis for award.

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## DECISION

For Your Information, Inc. (FYI) protests the award of a contract to RGII Technologies, Inc. under request for proposals (RFP) No. DTCG23-97-R-HRM001, issued by the U.S. Coast Guard for information technology support services. FYI contends that RGII's proposal did not satisfy the RFP's personnel qualification requirements and was unacceptable.

We sustain the protest.

The RFP provided for the award of an indefinite delivery/indefinite quantity contract with fixed-price, hourly labor rates on a best value basis. Offerors were informed that the procurement would be conducted as a two-phased competition, restricted to small business concerns certified under the Small Business Administration's section 8(a) program. Phase I was stated to be less important than phase II. Under phase I, the agency would evaluate "mini-proposals" and past performance, and advise offerors of their chances of receiving award. Under phase II, proposals would be evaluated under the following factors, listed in descending order of importance: oral presentation/slides,<sup>1</sup> personnel data forms (PDF), and cost/price. The phase II technical evaluation factors together were stated to be significantly more important than cost/price.

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<sup>1</sup>A number of evaluation subcriteria were identified under the oral presentation factor.

The RFP identified 10 labor categories, all designated as key personnel positions. Minimum personnel qualification requirements for personnel proposed in each labor category were listed in the statement of work. Section M of the RFP informed offerors that "[t]he quality and quantity of all proposed personnel must meet the stated minimum qualification in Section C."

Offerors were required to submit PDFs for 50 percent of the personnel proposed for each labor category. For each PDF, offerors were to include the individual's qualifications, education, and employment history to demonstrate compliance with the qualification requirements.

Phase I proposals were received from 51 firms; only those firms whose proposals were evaluated to be blue/superior in phase I were asked to continue, although all firms were permitted to do so.<sup>2</sup> RGII and FYI, the incumbent contractor, were not asked to continue because their proposals were evaluated to be green/satisfactory. Phase II proposals were received from 5 firms, including RGII and FYI. RGII's and FYI's proposals (and all but one of the remaining proposals) were evaluated by the technical evaluation team (TET) to be green/satisfactory overall. The other proposal was rated yellow/marginal overall. The TET assessed all phase II proposals as red/unsatisfactory under the PDF factor. Discussions were conducted with all offerors on cost/price and PDFs, and best and final offers (BAFO) requested.

All offerors submitted BAFOs, all of which the TET found to be green/satisfactory overall. Only FYI's BAFO, however, was found to satisfy the stated personnel qualification requirements. RGII's BAFO was assessed to be yellow/marginal under the PDF factor because personnel identified under 5 of the 10 labor categories did not satisfy the qualification requirements. All of the BAFOs were determined to have reasonable and realistic prices. RGII's BAFO was the lowest priced, and FYI's BAFO was the third lowest priced. The TET recommended award either to the offeror proposing the highest price or to FYI.<sup>3</sup>

The source selection official (SSO), noting that all proposals were rated green overall, requested that the TET justify its recommendation for making award on a basis other than lowest price. The TET informed the SSO of its concern with RGII's

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<sup>2</sup>The RFP stated a color/adjectival evaluation scheme: blue/superior, green/satisfactory, yellow/marginal, and red/unsatisfactory. Green/satisfactory was defined by the RFP as meeting all minimum requirements and having no deficiencies; yellow/marginal was defined as failing to meet all minimum requirements and having one or more correctable deficiencies.

<sup>3</sup>The record is unclear as to why the TET recommended selection of the highest-priced proposal.

low-priced proposal and that it doubted RGII's ability to obtain qualified personnel, particularly because RGII failed to propose qualified personnel even after discussions.

The SSO then requested that the TET and contracting officer verify RGII's past performance. The contracting officer informed the SSO that RGII's past performance was superior. The SSO determined that RGII's offer was the best value to the government, finding:

The risk associated with PDFs is minimized since the Coast Guard must approve all PDFs prior to employees coming on board. The cost differential between FYI and RGII did not justify [an award to FYI].

Specifically, the SSO concluded that RGII's failure to propose qualified employees "will be dealt with under the applicable clauses as a contract administration issue" and that any risk arising from these proposal deficiencies were mitigated by RGII's strong past performance references. Award was made to RGII, and this protest followed. Based upon the written determination of the head of the contracting activity that proceeding with performance was in the best interests of the government, contract performance has not been stayed.

FYI contends that award to RGII was improper, because RGII's proposal is technically unacceptable. We agree, as explained below. FYI also challenges a number of other aspects of the procurement, including the SSO's determination the BAFOs were technically equivalent,<sup>4</sup> the conduct of discussions with FYI, the cost/price evaluation, and RGII's substitution of personnel after award of the contract. We need not resolve these other protest challenges, because our decision and recommendation render the remaining protest issues academic.

In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. National Medical Staffing, Inc.; PRS Consultants, Inc., 69 Comp. Gen. 500, 502 (1990), 90-1 CPD ¶ 530 at 3.

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<sup>4</sup>Although we do not consider the merits of the alleged unreasonable determination that proposals are technically equal, we note that the record on this determination provides little explanation beyond stating that the proposals received the same adjectival rating and were thus technically equal. We have long held that evaluation scores and adjectival ratings are only guides for use by source selection officials in comparing the merits of competing proposals; any selection decision must rest upon a rational basis for the decision and be adequately documented to permit a reasoned review of that basis. Grey Advertising, Inc., 55 Comp. Gen. 1111, 1118 (1976), 76-1 CPD ¶ 325 at 9; Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2 CPD ¶ 89 at 9-10.

There is no question here that the personnel qualification requirements are material terms of the solicitation. As indicated above, the RFP informed offerors that all proposed personnel must meet the stated minimum qualifications. Throughout the evaluation of proposals, the TET recognized the importance of the personnel qualification requirements in ensuring a staff capable of performing the contract requirements. Moreover, the TET recounted that in its prior contract experience the retention of qualified personnel was necessary for satisfactory performance and the amount of labor costs incurred by a contractor was directly related to the level of personnel qualifications. In this regard, the costs incurred in performing a services contract, such as here, are almost entirely personnel costs, and it can be expected that hiring and retaining qualified personnel is more costly than hiring and retaining less qualified personnel.

There is also no question that RGII's proposal did not satisfy the qualification requirements in 5 of the 10 labor categories. Indeed, the SSO recognized RGII's failure to meet these requirements, although he apparently believed that RGII's failure to propose minimally qualified personnel could be "dealt with" during the agency's issuance of task orders and administration of the contract. However, RFP sections H.9(c) and I.12, the provisions upon which he presumably relied in this regard, cover substitution of individuals different from those identified in the proposal. As to the persons named in the proposal, RFP section H.9(a) provides that "[t]he contractor agrees to assign to the contract those persons whose [PDFs] were submitted with the proposal." Thus, whatever post-award approval rights the substitution clauses may provide the agency as to individuals different from those named in the proposal, the agency's only opportunity to approve (or disapprove) the individuals named in the proposal was during the evaluation process. Accordingly, by making award to RGII, the agency accepted the individuals proposed, and this acceptance was not subject to further review under the substitution clauses.

Since the individuals proposed in RGII's proposal did not satisfy the qualification requirements, acceptance of its proposal meant that the agency waived the personnel qualification requirements for RGII, which resulted in an unfair and unequal evaluation. See Martin Marietta Corp., 69 Comp. Gen. 214, 219, 90-1 CPD ¶ 132 at 7. It is a fundamental principle of federal procurement that offerors be treated equally; that is, offerors must be provided with a common basis for the preparation of proposals, and award based upon the requirements stated in the solicitation, unless the offerors are notified of changes in (or relaxation of) the agency's stated requirements. See Meridian Management Corp.; Consolidated Eng'g Servs., Inc., B-271557 et al., July 29, 1996, 96-2 CPD ¶ 64 at 5. Here, the agency's action prejudiced the protester because FYI was not notified of the waiver, and it proposed personnel that fully met the qualification requirements.

In sum, we find that award to RGII on the basis of its unacceptable proposal was improper.

We recommend that, if otherwise appropriate, the Coast Guard terminate the award to RGII and make award to FYI, since it appears to be the only offeror that submitted a technically acceptable proposal.<sup>5</sup> As the head of the contracting activity determined to continue performance in the best interests of the United States, our recommendation is made "without regard to any cost or disruption from terminating, recompeting, or reawarding the contract." 31 U.S.C. § 3554(b)(2) (1994). We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1997). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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<sup>5</sup>We note that FYI's proposal also had evaluated deficiencies under other factors not addressed here. The record is unclear as to whether any of these deficiencies would render FYI's proposal unacceptable, and the agency has made no assertion to that effect. The agency should review FYI's evaluated deficiencies to determine whether FYI's proposal satisfies all the material terms and conditions of the RFP and is technically acceptable. In addition, as alleged by FYI, it appears that the protester was not informed of these deficiencies during discussions. Therefore, if FYI's proposal is determined to be technically unacceptable, we recommend that the Coast Guard reopen discussions, request a new round of BAFOs, make a new source selection decision, and terminate the existing contract, if an offeror other than RGII is selected.