



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: The Centech Group, Inc.

File: B-278715; B-278715.2

Date: March 5, 1998

Michael A. Hordell, Esq., and Laura L. Hoffman, Esq., Gadsby & Hannah, for the protester.

Robert M. Nutt, Esq., for Kathpal Technologies, Inc., an intervenor.

William L. Murphy, Esq., and John F. Schorn, Esq., Department of the Treasury, for the agency.

Andrew T. Pogany, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency engaged in meaningful discussions where it advised offeror during written discussions that composite labor category prices for services contract were either too high or too low and it gave offeror more specific indications of its concern during oral discussions, even though the agency did not specify which categories were high and which were low; contracting agency is not required to conduct all-encompassing discussions, but is only required to lead offerors into those areas of their proposal needing amplification, given the context of the procurement.

2. Contracting agency properly determined that offeror's price proposal was unrealistically low based on comparison with prices received from other offerors, the independent government estimate, market survey prices, and the current contract price.

DECISION

The Centech Group, Inc., the incumbent contractor, protests the award of a contract to Kathpal Technologies, Inc. under request for proposals (RFP) No. A-97-04, a competitive section 8(a) set-aside, issued by the Department of the Treasury for support services for software applications maintenance, development, and testing. Centech contends that the agency's evaluation of its proposal, especially its determination that the firm's prices were unrealistic and unacceptable, was unreasonable.

We deny the protest.

BACKGROUND

The RFP, issued December 19, 1996, sought proposals for support services for the agency's Automated Systems Division (ASD), which is responsible for the development and maintenance of many software applications systems, ranging in complexity from small administrative or tracking systems on personal computers and local area networks to large and complex databases, document management, and econometric systems on minicomputers and mainframes. To ensure continued reliability and availability of existing application systems and to develop new and enhanced application systems, the RFP required the successful contractor to "provide a stable cadre of personnel working on site in partnership with Government employees to deliver" the required services.

The RFP provided for award of a fixed-price/level-of-effort and indefinite quantity/labor hour contract for a base period with four 1-year options. Award was to be made to the offeror submitting the proposal representing the best value to the government, technical and price factors considered. To be "eligible for award," proposals had to meet the following conditions: the technical proposal had to be "responsive" to all sections of the solicitation and offer the best overall value; the proposed price had to be determined to be reasonable; and the offeror had to be found responsible. The RFP contained the following technical evaluation factors, listed in descending order of importance: (1) technical performance; (2) past performance; and (3) corporate capability and performance management. Concerning the cost/price evaluation, the RFP stated that each offeror's proposal would be assessed for cost realism, total contract cost, and cost risk. The RFP stated that cost realism would be evaluated in accordance with Federal Acquisition Regulation (FAR) § 52.222-46, which states, in part, as follows:

The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements [and constitute sufficient cause to justify rejection of a proposal].

The RFP emphasized that any proposal that was "unrealistically low in cost(s) and/or price [would] be deemed reflective of an inherent lack of technical competence [or] failure to comprehend the complexity and risk" of the requirements, justifying "rejection of the proposal."

Evaluation of total contract costs contemplated adding the total price for all options to the total price for the basic requirement. Cost risk referred to any "aspect of an offeror's proposal which could have significant negative cost consequences for the

Government." Further, the RFP stated that where cost risk was assessed it may be described in "quantitative terms or used as a best-value discriminator." The RFP contained estimated numbers of labor hours for numerous labor categories (Entry Level Oracle Information Systems Analyst, Senior Subject Matter Expert, etc.) for the level-of-effort portion of the contract. The RFP also contained numerous labor categories (Senior PC/LAN Information System Analyst, Senior Client/Server Information System Analyst, etc.) for the indefinite quantity portion of the contract and requested composite labor rates for each category.

The agency received eight proposals, and included Centech's, Kathpal's, and three others in the competitive range. Following the initial evaluation, the evaluators had recommended that the Centech proposal be excluded from the competitive range because its proposed cost was so unrealistically low as to be indicative of a failure to comprehend the complexity and risk of the contract requirements. Specifically, the agency found that 50 of the 53 labor categories in the base and option years were affected by unrealistic pricing; 18 of 20 fixed-price/level-of-effort labor categories and 32 of 33 indefinite quantity labor categories were priced 20 percent or more below the independent government cost estimate (IGCE). Centech's overall price was 33 percent below the IGCE in option year 4, and averaged 26 percent below the IGCE across all contract years. Centech's labor rates were generally reduced significantly after the base year. However, because of Centech's incumbency status, the agency decided to retain the firm in the competition. Written and face-to-face discussions were held with each of the competitive range offerors. A typical written deficiency report (DR) issued to Centech during discussions was as follows:

The offeror is required to provide a realistic composite rate(s) for each labor category that will ensure a stable, technically qualified cadre of personnel over the life of the contract. The Government developed acceptable ranges/indicators for each labor category. The Government indicators/ranges were developed using the [IGCE], other negotiated contracts, and industry data. The following proposed fixed-price level of effort labor categories have composite rates that (1) are below or exceed the acceptable ranges, and (2) appear unrealistic to maintain qualified staff over the life of the contract. The Government is extremely concerned with cost risk, and its relationship to successful performance.¹ (Emphasis added.)

Best and final offers (BAFO) were requested and received; in the final technical evaluation, Kathpal's proposal was ranked first with an "excellent" rating, while

¹Therein followed a listing of numerous labor categories without any explanation of which categories the agency had determined were high and which were determined to be unrealistically low.

Centech's was ranked fifth with a "fair" rating. The final price/cost evaluation results are summarized as follows:

| Rank | Offeror | Total Contract Cost Score | Cost Realism Score | Cost Risk | Total Cost |
|------|-----------|---------------------------|--------------------|-----------|----------------|
| 1 | Kathpal | Good | Acceptable | Low | \$16.5 million |
| 2 | Offeror A | Fair | Acceptable | Low | \$17.0 |
| 3 | Offeror B | Fair | Acceptable | Low | \$17.1 |
| 4 | Offeror C | Acceptable | Acceptable | Low | \$18.5 |
| 5 | Centech | Unacceptable | Unacceptable | High | [deleted] |

Based on the evaluation results, the evaluators recommended award to Kathpal as the best value offeror. The source selection authority (SSA) agreed and made award to Kathpal; this protest followed. We address Centech's principal allegations below.

MEANINGFUL DISCUSSIONS

Centech argues that the agency "should have provided [the firm] with guidance/information concerning which labor categories were below acceptable ranges and which categories exceeded the acceptable ranges." Centech specifically requested information for each labor category identified, and it believes the agency unreasonably refused to provide such specific guidance. Centech also states that by informing Centech during discussions that its proposed profit rate and certain handling fees for parts and supplies were too high, the agency actually misled Centech into believing that its labor rates were too high, rather than too low.

Contracting agencies are required, in a negotiated procurement, to conduct meaningful discussions with all responsible offerors whose proposals are within the competitive range. Techniarts Eng'g, B-234434, June 7, 1989, 89-1 CPD ¶ 531 at 3. Agencies are not required to conduct all-encompassing discussions but, rather, need only lead offerors into those areas of their proposal needing amplification, given the

context of the procurement. Creative Management Tech., Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61 at 4. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved. J.G. Van Dyke & Assocs., B-248981, B-248981.2, Oct. 14, 1992, 92-2 CPD ¶ 245 at 4.

The discussions here were adequate. First, the agency led Centech into the area of its proposal that the agency determined was deficient--the reasonableness and realism of its proposed rates which the agency advised were either below or exceeded acceptable ranges.² Second, in addition to the written DRs, the agency addressed the matter more specifically during oral discussions, which were memorialized in agency notes. In those discussions, the agency stated that Centech's labor costs were "out of the range," and while the agency did not directly state "which direction" the labor costs fell outside the range, the agency identified its concern as to how Centech would maintain qualified personnel throughout the option years of the contract, given its proposal to decrease its labor costs, stating: "If your price is reasonable in the first period, why is your rate in the option years reasonable? . . . [H]ow do you keep people[?] . . . [C]an you get a qualified person? Look at next year, I wouldn't stay if I didn't receive a raise." Finally, we find reasonable the agency's reluctance to give more specific guidance to Centech concerning the labor rates because the agency, in our view, reasonably believed that a competent offeror could ascertain for itself whether its labor rates were too low or too high. We thus conclude that discussions with Centech were meaningful and unobjectionable.

PRICE/COST REALISM AND REASONABLENESS

Centech raises numerous arguments as to why the BAFO price/cost realism analysis was flawed. Centech principally maintains that it provided the agency with an explanation, discussed below, in its response to the DRs as to why its labor rates were reduced significantly after the base year, but that the agency unreasonably ignored it.

"Realism" ordinarily is not considered in the evaluation of proposals for the award of a fixed-price contract because the government's liability is fixed and the risk of cost escalation is borne by the contractor. Human Resources Sys., Inc.; Health Staffers, Inc., B-262254.3 et al., Dec. 21, 1995, 96-1 CPD ¶ 35 at 5. However, because the risk of poor performance when a contractor is forced to provide products or services at little or no profit is a legitimate concern in evaluating

²Although Centech asserts otherwise, the record shows that Kathpal was given identical information during discussions--that its labor categories had composite rates that "are below or exceed the acceptable ranges." Kathpal apparently reexamined its rates based on this information and correctly determined that some were too low. Centech could have done the same, but failed to do so.

proposals, an agency at its discretion may, as here, provide for a price realism analysis in the solicitation of fixed-price proposals. Cardinal Scientific, Inc., B-270309, Feb. 12, 1996, 96-1 CPD ¶ 70 at 4; PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366 at 5. The nature and extent of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Cardinal Scientific, Inc., supra, at 4.

The cost/price evaluation was reasonable. Centech's BAFO responded to the agency's questions concerning Centech's lower rates for the option years as follows:

[deleted]

The record shows that the agency performed an exhaustive and detailed realism analysis, preparing bar graphs, charts, and tables. The evaluators found, after a comparison of prices among offerors and against the IGCE, market survey prices, and Centech's current contract price, that Centech's labor rates were high in the base year and unrealistically low in the option years. For example the rate for the proposed Senior PC/LAN Information Systems Analyst Project Leader, at [deleted] in the base year, was 34 percent higher than the IGCE. In option year 4, however, this same labor category rate, at [deleted] was 29 percent lower than the IGCE. The agency also found that almost all labor categories showed a dramatic drop in rates at the end of the base year, in a pattern typical of mathematical and material unbalancing and unrealistically low prices. In short, the agency found that 18 of the 20 fixed-price labor categories and 32 of the 33 indefinite quantity labor categories were priced more than 20 percent below the IGCE, that the average shortfall was more than 26 percent across the contract life, and that Centech's prices were as much as 44 percent lower than the IGCE in option year 4. We find no basis for objecting to the agency's conclusion that Centech's pricing was too low in the option years.

Based on these low prices, the agency determined that Centech lacked an understanding of the requirements, which affected the technical evaluation as well. For example, concerning the transition plan for the work, Centech's original proposal consisted of a brief, 1-1/2 page document which stated that "there would be no key transition issues" if Centech were awarded the contract because "all personnel currently supporting the . . . contract will be available to continue on the new contract." However, as stated above, in its BAFO Centech revised its Personnel and Staffing Plan to include a large turnover of staff at the completion of the base period resulting, in the agency's view, in a potentially serious transition problem at the end of the base period and potentially serious problems in retaining professional employees in the option periods. As the final technical evaluation report states:

[Centech] scored fair for their overall proposal . . . [Centech's] technical performance remained fair, past performance remained good

and corporate capability dropped from very good to minimally acceptable. The reduction in the Corporate Capability is directly related to the Personnel and Staffing Plan described in [its] BAFO. [Centech's] staffing plan placed the Government at risk by proposing to constantly change technical staff, specifically in option year 1 and throughout the life of the contract. The RFP and government briefings before BAFOs specifically [emphasized] the Government's need for a stable cadre of technically qualified staff. [Centech's] proposed Personnel and Staffing Plan was unacceptable

Thus, contrary to the protester's assertion that its explanation of why its labor rates were reduced significantly after the base year was ignored by the agency, the record shows that the agency understood and fully considered the protester's explanation. Despite the explanation, the agency, in our view, reasonably evaluated Centech's option year prices as too low, and its conclusion that this pricing also demonstrated a lack of understanding was reasonable and consistent with the terms of the RFP. Centech's proposal was therefore properly not selected for award.³

BAIT-AND-SWITCH

Finally, Centech argues that the agency took an active role in a bait-and-switch by Kathpal because that firm made many job offers to individuals previously employed under Centech's predecessor contract, rather than using the personnel it had proposed.

Generally, an offeror's misrepresentation concerning personnel that materially influences an agency's consideration of its proposal provides a basis for proposal rejection or termination of a contract issued based upon the proposal. ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 5. A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact upon the evaluation. Id.

³Centech challenges the agency's best value determination based solely on the agency's allegedly improper evaluation of its BAFO explanation concerning reduced labor rates after the base period. Since we have found the agency's evaluation reasonable and proper, we need not discuss this matter further except to note that Centech's personnel and staffing plan was rated as unacceptable in the best value determination prepared by the agency. As the agency states, "[s]uffice it to say that [the agency] reasonably considered the risk inherent in Centech's proposal which would have resulted in wholesale substitution of dubiously qualified individuals for those who performed well under the prior contract."

There is no evidence of an improper bait-and-switch. In its proposal, Kathpal stated that one of its "objectives" was "[m]aximum continuity of desirable incumbent staff," and the list of "detailed phase-in activities" included in Kathpal's transition plan included efforts to "[i]nterview and hire desirable incumbent staff." Further, Centech's incumbent staff were more knowledgeable and experienced with the required work than the personnel Kathpal proposed. Therefore, the fact that 8 such personnel of 20 personnel assigned to this contract by Kathpal were subsequently employed by Kathpal did not constitute a bait-and-switch; instead, it was consistent with Kathpal's proposal as evaluated.

The protest is denied.

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