



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Techsys Corporation

File: B-278904.3

Date: April 13, 1998

Kenneth D. Brody, Esq., and J. Patrick McMahon, Esq., McMahon, David & Brody, for the protester.

Paralee White, Esq., Gadsby & Hannah, for Walcoff & Associates, an intervenor.
Gena E. Cadieux, Esq., Patricia D. Graham, Esq., and Joseph A. Lenhard, Esq., Department of Energy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation proposal preparation instructions set forth type size and a clearly defined page limitation for proposals, agency appropriately declined to consider those pages of the protester's proposal which exceeded the specified page limitation.
2. Agency evaluation of technical proposals is unobjectionable where the record establishes that the evaluation was reasonable and consistent with the stated evaluation factors; protester's mere disagreement with the agency's conclusion does not render the evaluation unreasonable.

DECISION

Techsys Corporation protests the Department of Energy's (DOE) decision not to award Techsys a contract under request for proposals (RFP) No. DE-RP01-97EI30000, issued by DOE for technical services for the Energy Information Administration (EIA).¹ Techsys asserts that DOE improperly and arbitrarily eliminated certain pages of Techsys's proposal from consideration and otherwise improperly evaluated the proposal.

We deny the protest.

DOE issued the RFP, referred to as the EIA Omnibus Procurement (EOP), via the Internet on July 7, 1997. This solicitation, which combined technical support

¹EIA is an independent statistical and analytical agency within DOE.

services that were currently being performed for EIA under 11 separate support services contracts, sought separate proposals for 3 functional areas/contract line items (CLIN) consisting of information management and product production (IM&PP) support services (CLIN 001); energy analysis and forecasting support services (CLIN 002); and information technology support services (CLIN 003). For each CLIN, the RFP listed a maximum number of direct productive labor hours (DPLH), specifically, 528,984 DPLH for CLIN 001, 183,000 DPLH for CLIN 002, and 412,920 DPLH for CLIN 003. The EOP provided for multiple indefinite-quantity awards with awardees becoming eligible for post-award competition for task orders for a 3-year base period with one 2-year option. Since each contract will have cost reimbursement and fixed-price provisions, task orders are to be issued on both a cost-plus-fixed-fee and a fixed-price basis.

Section L.15 of the RFP stated that DOE would "award contracts resulting from this solicitation to the responsible offerors whose offer conforming to the solicitation will be the most advantageous to the Government, cost or price and other factors, specified elsewhere in the solicitation, considered" and advised that DOE intended to award on the basis of initial offers without discussions. Section M-1(B) reiterated that award would be made to the offerors whose conforming proposals were determined to be most advantageous to the government. At section M-3, the RFP identified the following weighted evaluation factors and subfactors:

- | | |
|---|----|
| 1. Business management, technical and organizational approach | 50 |
| 1.1 Business management plan | 20 |
| 1.2 Technical plan | 20 |
| 1.3 Organizational approach | 10 |
| 2. Past and present experience | 20 |
| 3. Corporate resource management | 20 |
| 3.1 Retain labor categories | 5 |
| 3.2 Additional resources | 5 |
| 3.3 Staff training and development | 5 |
| 3.4 Provide automated data processing (ADP)
hardware, software, facilities | 5 |
| 4. Videotape response/presentation | 10 |
| 5. Past performance | |

Offerors were advised that past performance would be adjectivally rated, and that the technical proposal was significantly more important than past performance or cost, and that past performance was also more important than cost.

In submitting a total, estimated price, offerors were advised at section L.34(2) to include a fixed-price quotation for 50 percent of the maximum amount of level of effort (LOE) or DPLH for the total 5-year contract term. Section M.4 of the RFP advised offerors that the proposed fixed price for a particular functional area would

be doubled and that amount would be used as a ceiling amount, indicating that this amount would provide the basis for the price comparisons of the proposals.

Section L.31 of the RFP contained the proposal preparation instructions for the Technical and Business Management proposal. Section L.31(A)(1) stated that each offeror will provide a Technical and Business Management Proposal for each functional area for which an offer is being made. The provision also stated:

All materials submitted shall be in typeface Times New Roman 12 Point, doubled spaced on 8 1/2 inch by 11 inch white paper with one inch margins all around and printed on one side. The Technical and Business Management Proposal shall not contain more than 150 numbered pages inclusive of the table of contents, charts, exhibits, and any other materials the Offeror deems required for each functional area for which an offer is being made.

On August 1, DOE issued amendment No. 001, which answered questions from offerors concerning the solicitation. Two questions concerning the page limitation were asked:

L.31(A)(1) Volume II - Tech & Bus Mgt Proposal. It is our understanding that the section and subsection tab dividers are not included in the page count. Is this correct?

The answer provided by DOE stated:

No. 'The page limit is a maximum of 150 pages per functional area in its entirety'. The '150 numbered pages [is] inclusive of the table of contents, charts, exhibits, and any other material the Offeror deems required for each functional area for which an offer is being made'.

The second question asked was whether DOE would "consider excluding the table of contents from the 150 page count?" The agency answered, "No."

Techsys was 1 of 12 offerors that submitted proposals on CLIN 001, IM&PP support services, which consists of data operations, including, among other things, survey data collection, survey and data systems operations, sampling and estimation, and data integration and analysis; data integration, including, among other things, acquiring and developing data, maintaining integrated databases, performing consistency and quality tests, and calculating summary statistics; and, product production, including, among other things, production, publication, and dissemination and automated systems support for the dissemination of energy data. When DOE counted the pages in each proposal, it determined that Techsys's proposal exceeded the 150-page limit by 28 pages. By letter dated September 18, the TEC returned these 28 pages to Techsys, informing the protester that its

proposal exceeded the maximum 150 pages and that "only the first 150 pages of your Technical and Business Management Proposal will be accepted and forwarded for review and evaluation by the Technical Evaluation Committee." Other proposals which exceeded the page limit were treated in the same manner.

Members of the technical evaluation committee (TEC)² individually evaluated each proposal and, in internal discussions, reached a consensus on the strengths and weaknesses of each proposal and assigned each a point score of 0, 2, 5, 8 or 10 under each evaluation criterion.³ Numerical ratings were multiplied by the weight for the factors and the scores were then totaled. A proposal that received scores of 10 on each evaluation factor would receive a maximum point score of 1,000. Past performance was assigned an adjectival rating of "excellent," "good," "fair" or "neutral," "poor," or "unsatisfactory."

The TEC briefed the source selection official (SSO) and, based on the SSO's review of the evaluations and recommendations, the SSO determined to make awards to the six companies which submitted the highest technically-rated proposals. Techsys, whose proposal was tenth-ranked technically was not awarded a contract. In his selection statement, the SSO noted: "past performance information was received and evaluated, and price proposals were evaluated. These evaluations were considered."

The Techsys proposal received a total score of 300, consisting of the following point scores and weighted scores for each factor and subfactor:

	Score	Weighted Score
1. Business management and organizational approach		
1.1. Business management plan	5	100
1.2. Technical plan	5	100

²Three separate TECs, one for each CLIN or functional area, evaluated the proposals.

³As relevant here, a score of 5 reflected a proposal which appeared capable of meeting the RFP requirements and had few significant strengths or significant weaknesses. A score of 8 reflected a proposal evidencing very good responses showing a high probability of meeting the RFP's requirements and had significant strengths and few significant weaknesses. A score of 10 reflected a proposal distinguished by its excellence as to have a very high probability of meeting all RFP requirements. Such a response would normally evidence significant strengths and no significant weaknesses.

clarifications,⁴ and asserts that such clarifications would have caused the agency to discard unmarked pages, redundant table of contents pages and certain clearly surplus narrative information contained in one section. Techsys asserts that "the inclusion of this information in the first place plays no meaningful role in the proposal, and its elimination through the process of clarification does not constitute a prohibited revision or improve the substance of the proposal in any measurable way."

Offerors are required to prepare their proposals within the format limitations set out in the solicitation, including the page limits at issue here, and assume the risk that proposal pages beyond the page limits will not be considered because consideration of an offeror's excess proposal pages could give that offeror an unfair competitive advantage. All Star Maintenance, Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294 at 3-4; Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58 at 4-5.

Here, the RFP clearly provided for a 150-page limit on technical proposals and in response to specific questions concerning the page limit, DOE indicated by amendment that any page that an offeror deemed necessary to include in its proposal would be included in the page count, including the table of contents and tab dividers. Thus, offerors were on notice both of the 150-page limitation and that any and all pages, including unmarked pages, table of contents pages and all narratives would be considered in the page calculation. Techsys's proposal clearly failed to comply with the solicitation format requirements. Techsys did not protest the page limits of the RFP, but chose to exceed the proposal page limitation set forth in the RFP, thereby assuming the risk that excess pages in its proposal would be rejected for noncompliance with the page limits. Infotec Dev., Inc., supra, at 4.

While Techsys argues that DOE should have been more flexible in the handling of the page limitation, an agency that has set out a clear page limitation in a solicitation is not obligated to sort through hundreds of pages to decide which pages should or should not be counted toward that limitation. HSQ Tech., B-277048, Aug. 21, 1997, 97-2 CPD ¶ 57 at 3 n.1. Further, where, as here, the agency has set specific page limits and indicated that any and all pages submitted would count toward that limit, the agency was not obligated to ask the offeror, after submission of its proposal, to "clarify" its proposal by selecting which pages it wants counted. Infotec Dev., Inc., supra, at 5. Under these circumstances, the agency reasonably computed the 150 pages and properly declined to consider those

⁴FAR § 15.607(a) provides that contracting officers shall examine all proposals for minor informalities or irregularities and apparent clerical mistakes and that communication with offerors to resolve these matters is clarification, not discussion, and does not trigger the requirement for discussions with all competitive range offerors unless the communication prejudices the interest of other offerors.

portions of Techsys's proposal that exceeded the stated limits. All Star Maintenance, Inc., *supra*, at 3-4.

TECHNICAL EVALUATION

Techsys otherwise objects to the technical evaluation of its proposal on the basis that the evaluators provided little or no explanation or documentation for their determinations, and that the evaluation of its proposal under factor 1, Business Management, Technical and Organization Approach, was improper. Techsys also objects to the evaluation of its past performance.⁵

In support of its argument that the evaluation is poorly documented and does not provide satisfactory support for the point scores assigned, the protester uses as an example the evaluation consensus sheet for criterion 1.3, which lists no strengths or weaknesses for its proposal. Techsys complains that it is impossible to discern the basis for this determination and asserts that the finding that the proposal has no strengths "appears to be at odds with the determination that the same proposal has no weaknesses." Techsys argues that because the worksheet was blank, the evaluation of this subcriterion rests exclusively on an unsupported point score.

Techsys's argument that the evaluation was improperly documented is without merit. As noted above, each factor and subfactor was evaluated on a point scale of 0, 2, 5, 8, or 10. A score of "5" reflected a proposal response which appeared capable of meeting the requirement; such a response had few significant strengths or weaknesses. The agency rating plan defined a "strength" as an aspect of a proposal which appears to enhance the likelihood of successful performance of the requirements; a "weakness" was defined as an aspect of a proposal which fails substantively to address matters under evaluation or otherwise appears to reduce the likelihood of successful performance of the requirements. The term "significant" when used to modify "strength" or "weakness" indicated a major strength or weakness which would have substantial positive or negative impact on the offeror's ability to perform the required tasks.

The protester wrongly assumes that if a proposal is determined to have no weaknesses, it must have some strengths. There is no basis to assume such an inherent linkage; a proposal reasonably could be determined to have several strengths and no weaknesses or to have several strengths and several weaknesses.

⁵In its initial protest submission, Techsys also argued that DOE's evaluation of factor 4, its video presentation, was improper. The agency provided explanation and support for its technical assessment of the video presentation in its report, but Techsys, in its comments filed on that report, did not rebut the agency's position. Therefore, we regard this issue as abandoned. Theisinger und Probst Bauunternehmung GmbH, B-275756, Mar. 25, 1997, 97-1 CPD ¶ 168 at 6 n.2.

The lack of any listed strengths or weaknesses meant that the evaluators found that, while the proposal was acceptable and the offeror appeared capable of performing the tasks required, the proposal did not evidence anything that either enhanced or reduced the likelihood of successful performance. While the protester believes that the evaluators should have written something on the evaluation form, the fact that no strengths or weaknesses were listed is sufficient to indicate that neither was found. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 5-6.

Business Management Plan

Section M.3 of the RFP advised offerors that their business management plan under factor 1 would be evaluated:

on the degree of its feasibility and effectiveness in task planning, monitoring, scheduling, cost controls, quality assurance techniques, security management, and the transition plan as it relates to the functional area in the Statement of Work for which an offer is being made. Also to be evaluated under the business management plan will be the adequacy of the Offeror's procedures for awarding, managing, and monitoring subcontracts and consultant agreements and plans to improve productivity and timeliness. The plan will also be evaluated on the adequacy of the proposed procedures to maintain productivity and timeliness given a budget reduction.

To facilitate the evaluation, section L.31(B)(a) required, among other things, that offerors identify how task planning, monitoring, scheduling, cost controls, and quality assurance techniques will be determined, managed, and reported for work performed under this contract.

The TEC assigned the Techsys proposal a score of 5 on this subfactor. The evaluators found that, while Techsys's proposal provided a good detailed discussion of the effectiveness of its cost controls, the proposal provided limited discussion of quality assurance techniques related to business practice.

Techsys contends that its rating on subfactor 1.1 is incorrect and that the agency's noted weakness "is a particularly puzzling evaluation comment because [Techsys] included an extended discussion of its unqualified quality assurance techniques at pages 17-20 of its [proposal]." Techsys also contends that DOE departed from the evaluation criteria in evaluating subfactor 1.1. Specifically, Techsys states that the RFP is very explicit about evaluating quality assurance as it relates to the functional area in the SOW and argues that there is no requirement that offerors discuss quality assurance with respect to business management techniques.

The evaluation of technical proposals is a matter within the contracting agency's discretion since the agency is responsible for defining its needs and the best

method of accommodating them. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241 at 5. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with stated evaluation criteria, and not in violation of procurement laws and regulations. Id.

The record does not show that the agency improperly evaluated Techsys's proposal concerning its business management plan. We have reviewed pages 17 to 20 of the Techsys proposal and, contrary to Techsys's position, the protester did not provide a detailed discussion of its quality assurance plan. Rather, the protester's proposal only provides its quality assurance procedures as they relate to a limited situation-- [deleted]. However, Techsys does not describe any quality assurance techniques for the other tasks outlined in the SOW or for any tasks related to business management. Based on this record, DOE reasonably concluded that Techsys's discussion of its quality assurance procedures was limited and presented a weakness in its proposal.

We also find unpersuasive Techsys's contention that the evaluators' consideration of quality assurance techniques related to business practices represents the use of an undisclosed evaluation criterion.

Solicitations must inform offerors of the basis for proposal evaluations, and the evaluation must be based on the factors set forth in the solicitation. FAR §§ 15.605(d)(1), 15.608. However, while agencies are required to identify the major evaluation factors, they are not required to identify all areas of each factor which might be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. Bioqual, Inc., B-259732.2, B-259732.3, May 15, 1995, 95-1 CPD ¶ 243 at 4.

While the solicitation did not explicitly provide that the proposals would be reviewed for the offerors' quality assurance procedures as they relate to its business management plan, in our view, that feature is intrinsically related to and encompassed by the subfactor. That is, the business management plan was to be evaluated as it related to, among other things, task monitoring, cost control, and quality assurance. DOE reasonably viewed these issues and quality assurance as intertwined with a firm's business practices generally. Thus, DOE's consideration of quality assurance techniques related to an offeror's business management plan was unobjectionable and consistent with the stated evaluation criteria.

In any event, even if Techsys were correct and its proposal should not have been downgraded for a limited response regarding its quality assurance techniques, its evaluation would not change. Specifically, other than the one strength listed above, the record does not show that Techsys's proposal evidenced other significant strengths and the protester does not identify other strengths it believes should have been noted here by the evaluators. Thus, even if it had not been assessed a

weakness, Techsys's score on this subfactor would remain unchanged as the proposal still would properly be characterized as having "few significant strengths or significant weaknesses."

Technical Plan

Section M.3 also advised offerors that subfactor 1.2, technical plan, would be evaluated on the effectiveness of the offeror's technical plan as demonstrated by its technical expertise to accomplish the work in the functional area for which an offer is being made. Section L.31(B)(a) required that each offeror provide a detailed discussion of its technical plan to accomplish all of the specific requirements of the SOW, including references in support of the plan.

The TEC assigned Techsys's proposal a score of 5 on this subfactor, finding one strength (real-time editing expertise) and two weaknesses (no demonstrated ability in survey design and no expertise in information dissemination and product support). Techsys argues that its proposal was improperly assessed on this subfactor and that the designated weaknesses were discussed in its proposal. Techsys believes that its proposal warranted a score of 8 or 10 under this subfactor.

We have reviewed the proposal pages Techsys cites as relevant to its discussion on survey design and dissemination, and they provide no basis to question DOE's evaluation. For example, in Techsys's "Data Operations" section, we find no mention of survey design work or dissemination work. Indeed, the headings under this section are [deleted]. Contrary to the protester's assertion, we see no specific references to dissemination in a second section of Techsys's proposal, although the protester does mention preparation of [deleted]. Techsys does discuss its "[deleted] approach" to survey construction and execution on 2 pages of its technical proposal, [deleted]. However, this discussion is broad and provides few details or specifics.

In any event, as was the case for subfactor 1.1 discussed above, Techsys's proposal was evaluated as "fair" or "neutral" on this subfactor, with a score of 5, indicating that the evaluators believed Techsys was capable of performing on this subfactor. Even if the evaluation were erroneous as to the weaknesses noted, Techsys's score on this subfactor would not change since, again, DOE noted only one strength and Techsys does not question this evaluation or suggest other strengths. Thus, Techsys does not demonstrate that its proposal had the significant strengths required for a higher score, irrespective of the assessed weaknesses.

Past Performance

Section M.3 of the RFP provided that an offeror's past performance would not be point scored but would be evaluated with respect to satisfaction of customer cost and technical requirements, customer relations, production and product timeliness,

corporate integrity and all other functions associated with the management and administration of tasks.

Ratings for past performance were based on responses from questionnaires submitted by offerors' references. References were to, among other things, provide a performance rating on a scale of 0 to 10, where 0 is unacceptable and 10 is outstanding, on 25 data operations, data integration, and product production tasks. While the evaluators rated Techsys's past performance as "good," Techsys argues that it should have received an "excellent" rating, noting that it "is unaware of any government sources who would have provided information to the agency that would warrant less than an excellent rating." Techsys also states that it is aware of at least one source that rated its past performance as excellent. The protester argues that if it had received the "excellent" past performance rating it deserved, it would have been awarded a contract.

The record shows that while one reference rated Techsys outstanding (10) on the majority of the tasks, a second reference rated Techsys outstanding (10) on only three tasks, a "9" on four tasks, "8" on nine tasks, and "7" on four tasks. Thus, while Techsys's past performance evaluation was clearly favorable, DOE's "good" rating was unobjectionable as it reasonably reflects the combined past performance evaluations. In sum, we see no basis to object to the agency's evaluation of the Techsys proposal.

The protest is denied.

Comptroller General
of the United States