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**Comptroller General
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**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Korrekt Optical, Inc.

File: B-288128; B-288128.2

Date: September 21, 2001

Sam Z. Gdanski, Esq., for the protester.
Merilee D. Rosenberg, Esq., Philip Kauffman, Esq., and Phillipa L. Anderson, Esq.
Department of Veterans Affairs, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Agency's calculation of the mathematical average of prices submitted by five competitive range offerors, and disclosure of that average price to protester and awardee, who were the only offerors included in the agency's subsequent competitive range determination, did not constitute prohibited communications.
2. Agency's evaluation of protester's technical proposal was reasonable where protester failed to adequately respond to multiple technical weaknesses and deficiencies which the agency had called to protester's attention during discussions.

DECISION

Korrekt Optical, Inc. protests the Department of Veterans Affairs' (VA) award of a contract to Safe-Lite Optical Company under request for proposals (RFP) No. 590-26-01 to provide prescription eyeglasses for eligible veterans. Korrekt protests that the agency engaged in an auction, improperly evaluated technical proposals, and failed to conduct meaningful discussions.

We deny the protest.

BACKGROUND

The RFP was issued on February 12, 2001, seeking proposals to provide prescription eyeglasses to eligible veterans at specified VA facilities, and contemplated award of a fixed-price requirements contract for a base period and four 1-year option periods. Section B of the solicitation contained line items for various types of prescription lenses, advised offerors that the agency estimated a total of 18,500 eyeglasses would

be required annually, and required offerors to propose fixed prices for the various individual line items.

The solicitation required offerors to submit cost and technical proposals and established the following technical evaluation factors: ability to make lenses, quality of frame selection, staff experience and qualifications, and quality assurance plan. Agency Report, exh. 3, RFP at 26; Agency Report, exh. 10, Letters from Contracting Officer to Offerors (Apr. 2, 2001).¹ Regarding the basis for award, the solicitation provided that the combined technical factors would be slightly more important than price.

The agency received eight proposals by the March 15, 2001 due date, including proposals submitted by Korrekt and Safe-Lite.² After separating pricing information from the technical proposals, the technical proposals were evaluated by a technical evaluation panel (TEP). Consistent with the solicitation statement that technical factors would be more important than price, the agency assigned a total of 60 points to the technical factors and 40 points to price.³ Although Korrekt's proposed price was the lowest submitted, its technical proposal was ranked sixth of the eight proposals submitted due to various evaluated technical weaknesses and/or deficiencies.

In evaluating Korrekt's technical proposal, the TEP was concerned that the proposal failed to sufficiently demonstrate Korrekt's ability to make the required lenses—one of the two most important technical evaluation factors. Specifically, Korrekt's initial proposal stated that Korrekt was currently producing 500 pairs of glasses per day and had produced a total 91,480 in the prior year, but indicated it did not intend to increase current staffing or augment other manufacturing resources to accommodate production of the additional 18,500 pairs of glasses—more than 20 percent of its prior annual production—that would be required annually under this contract.

¹ Offerors were advised by letters dated April 2, 2001 of a final revision in the relative importance of the evaluation factors. The order listed above reflects the April 2 revision.

² A ninth offeror failed to submit any technical information and, therefore, its proposal was not considered.

³ The agency used a point system for rating proposals in which the points associated with the individual technical factors were as follows: ability to make lenses (15), quality of frame selection (15), past performance (10), staff experience (10), and quality assurance plan (10). Regarding assignment of points for price, the agency employed a formula in which the maximum of 40 points was assigned to the lowest-priced proposal and lesser points were assigned to higher-priced proposals based on their ratio to the low price.

Accordingly, the TEP downgraded Korrekt's proposal under the evaluation factor covering the ability to make lenses. The TEP also downgraded Korrekt's proposal under the factor for quality of frame selection, criticizing the durability of the frames Korrekt had submitted.⁴ Finally, the TEP downgraded Korrekt's proposal under the factor for the quality assurance plan, on the basis that the proposal contained no evidence of a quality assurance process and no training plan.

Despite Korrekt's low technical ranking, its proposal received the maximum score of 40 points for price based on its lowest offered price. Based on Korrekt's total point score, including the 40 points awarded for low price, the agency included Korrekt's proposal in the competitive range along with the proposals of four other offerors including Safe-Lite.

By letters dated April 2, the agency opened discussions with each competitive range offeror. In the letter to Korrekt, the agency stated:

We . . . are providing a list of significant deficiencies in your submittals. The intent is to give you the opportunity to revise your technical, pricing and/or eyeglass frame submittals.

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Technical Proposal: Ability to fabricate lenses: Ability to handle daily volume of contract. Frames: overall poor frame selection, spring hinge selection poor, only one large plastic frame and one half frame submitted, no long temple, female frames unacceptable. QA Plan – No evidence of QA Plan process or customer satisfaction, no plan for training.

Agency Report, exh. 10, Letter from Contracting Officer to Korrekt, Apr. 2, 2001 at 1.

Each competitive range offeror submitted a response to the agency's discussion questions by the April 10 due date. Korrekt responded to the agency's concern regarding its ability to handle the production requirements by downplaying the significance of the additional production requirements and reiterating that it did not intend to retain additional staff or otherwise augment its production resources, stating:

⁴ Offerors were required to submit 36 sample frames as part of their proposals—12 male frames, 12 female frames, and 12 unisex frames.

We currently produce 550 pairs of glasses (jobs) per day⁵ with 2 shifts working 5 days a week. With 24 employees, that comes to 1.4 jobs per person per hour. This contract calls for approximately 18,500 of glasses per year. This should be about 72 jobs per day (or 4.5 jobs per hour, or .19 jobs per person per hour). Our current level of employees can produce an additional .19 jobs per person per hour. Our equipment (blockers, generators, cylinder machines) is capable of producing over 900 jobs per day. This is based on the manufacturers specifications.

Agency Report, exh. 25, Letter from Korrekt to VA Contracting Officer, Apr. 6, 2001, at 2.

Korrekt also responded to the agency's concerns regarding the poor quality of its sample frames by submitting a different selection of frames. Regarding the agency's stated concerns with its quality assurance plan, Korrekt provided an industry publication regarding quality control and represented that it was Korrekt's quality control manual.

The offerors' responses to the agency's April 2 discussion questions were reviewed and evaluated by the TEP. The TEP continued to have concerns with Korrekt's proposal under the three evaluation factors previously identified--ability to make lenses, quality of frame selection, and quality assurance plan. In a memorandum to the contracting officer, dated April 20, the TEP Chair summarized the concerns, stating:

Ability to make lenses - [Korrekt] has the ability to make all lenses, however, no supporting documentation to support ability to handle increase workload. Error rate exceeds VA expectations.
Frames - Poor selection of plastic unisex frames, no extra long temples in men's plastic, metal frame with screws at cheek bone area, lenses popped out easily, men's metal frame broke easily, women's metal frames bent easily, women's plastic frame broke easily, poor spring hinges (1 broke), overall lacked quality and diversity.
QA Plan - Information provided showed a QA Plan; however no outcomes [were] provide[d], no meeting minutes and no formal training plan for lab staff.

Agency Report, exh. 12, Memorandum from TEP Chair to Contracting Officer, at 2.

⁵ Korrekt offered no explanation for increasing its representation regarding current daily production by 10 percent.

Thereafter, the agency made a second competitive range determination, this time retaining in the competitive range only Korrekt’s proposal, which again offered the lowest price, and Safe-Lite’s proposal, which was the highest technically rated proposal. By letters dated April 27, the agency conducted a second round of discussions with these two offerors. In these letters, the agency advised both offerors that the agency had calculated the mathematical average of the prices submitted by the previous competitive range offerors, disclosed that average price to both offerors, and also advised Korrekt of various continued concerns the TEP had with its technical proposal.

Korrekt and Safe-Lite each subsequently submitted final proposal revisions. In its final submission, Korrekt provided a third set of sample frames and increased its price, offering a final price of \$3,921,000. In its final submission, Safe-Lite lowered its price, offering a final price of \$4,463,600. The agency performed a final proposal evaluation with the following results:

Eval. Factors (max. pts.)	Safe-Lite	Korrekt
Ability to Make Lenses (15)	[deleted]	[deleted]
Frame Selection (15)	[deleted]	[deleted]
Past Performance (10)	[deleted]	[deleted]
Staff Experience (10)	[deleted]	[deleted]
Quality Assurance Plan (10)	[deleted]	[deleted]
Price (40)	[deleted]	[deleted]
Total	93.39	80.75

Agency Report, exh. 18, at 3.

Based on this final evaluation, the contracting officer documented the following best value determination:

Best Value Analysis: the Technical Evaluation Panel judged [S]afe Lite’s proposal technically superior to Korrekt Optical’s. Out of a possible 60 points Safe[L]ite was judged almost 17 points superior. Korrekt Optical was rated either as the wors[t] technically acceptable proposal or near the wors[t] of the proposers throughout the negotiations. Use of our overall scoring system including pricing left

Korrek Optical behind the proposal of Safe Lite by 12 points. Based on the fair and reasonableness of Safe Lite's pricing offer and its technically superior offer, the SafeLite proposal is determined to be worth the cost differential and therefore the most acceptable offer to the government.

Agency Report, exh. 18, at 2.

A contract was awarded to Safe-Lite on June 6. This protest followed.

DISCUSSION

Auction

Korrek first protests that the agency violated the Federal Acquisition Regulation (FAR) by conducting what Korrek characterizes as an "improper auction" when it advised Safe-Lite of the average price submitted by the five competitive range offerors. We find no merit in this portion of the protest.

The FAR provides:

(e) Limits on exchanges: Government personnel involved in the acquisition shall not engage in conduct that—

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(3) Reveals an offeror's price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable

FAR §15.306(e)(3).

Initially, we note that, while the FAR generally prohibited "auction techniques" until 1997, due to revisions made in October 1997, the current FAR provision which addresses limitations on the disclosure of offerors' prices during discussions no longer includes language regarding the prevention of auctions. FAR §15.306(e)(3); see also RS Info. Sys., Inc., B-287185.2, B- 287185.3, May 16, 2001, 2001 CPD ¶ 98. Further, it is clear that, here, the agency's communications with Safe-Lite and Korrek regarding the average price submitted by the five competitive range offerors did not violate the FAR prohibition on revealing another offeror's price. We view the disclosure of the average price submitted by multiple offerors as reasonably within the scope of activities which the FAR expressly permits, including the authority to

“indicate to all offerors the cost or price that the Government’s price analysis, market research, and other reviews have identified as reasonable.”

FAR §15.306(e)(3). On this record, we find no merit in Korreect’s protest that the agency engaged in what Korreect characterizes as an “improper auction.”

Technical Evaluation

Korreect next protests that the agency improperly downgraded Korreect’s technical proposal by awarding it only 9.25 points under the evaluation factor regarding the ability to make lenses, complaining that its proposal adequately addressed its ability in this regard. Specifically, Korreect maintains that the statements it submitted in its initial proposal, along with its response to the agency’s April 2 discussion letter, quoted above, wherein Korreect essentially characterized the additional requirements of performing this contract as insignificant, should have precluded the agency from downgrading its proposal under this evaluation factor. We disagree.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int’l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency’s evaluation, we will not reevaluate technical proposals, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria. MAR, Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror’s mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

Here, as noted above, although this contract would require Korreect to increase production by more than 20 percent over its total production in the immediately preceding year, Korreect’s response to the agency’s April 2 discussion letter reiterated Korreect’s view that no additional resources would be required to perform this contract. Indeed, in pursuing this protest, Korreect itself succinctly summarizes the multiple portions of its proposal reflecting this view, stating:

In the paragraph [of our proposal] headed ‘Equipment’ . . . we stated that no new equipment would be needed based on the size of this contract. . . . On page 9 [of our technical proposal] . . . we stated that we already have all the support staff and material resources in place to meet the statement of work on this contract. Also on page 9 . . . we stated that no additional space would be required to service this contract.

Protest at 4.

Further, in responding to the agency’s identification of Korreect’s ability to meet the production requirements as a matter of concern, Korreect increased its factual

representation regarding its current production rate by 10 percent over the rate stated in its initial proposal--without explaining in any way the basis for this stated increase.⁶ In light of the RFP's estimated requirements of 18,500 pair of glasses annually--more than 20 percent of Korrekt's most recent actual annual production--and in the absence of any meaningful explanation by Korrekt regarding how it intended to meet these requirements, we find no basis to question the reasonableness of the agency's downgrading of Korrekt's proposal under the evaluation factor covering the ability to make lenses.

Korrekt also complains that the agency improperly downgraded its proposal under the quality assurance plan factor. In this regard, the agency's final evaluation assigned Korrekt's proposal a score of 7 out of a possible 10 points. As discussed above, the agency was concerned that Korrekt's proposal contained inadequate discussion of Korrekt's quality assurance process and no plan for training. In responding to the agency's concerns with regard to quality assurance, Korrekt submitted an industry publication, but provided virtually no information that specifically discussed Korrekt's own quality assurance process, and essentially confirmed that Korrekt would provide only on-the-job training for its personnel.

Again, we will not reevaluate technical proposals, but rather will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria, and mere disagreement with the agency does not render the evaluation unreasonable.

Here, in light of the agency's explicitly expressed concern regarding the quality assurance process that Korrekt would employ, as well as its concern with regard to training its personnel, and Korrekt's response providing virtually no information regarding its own, unique quality assurance process or training program, we find nothing unreasonable in the agency assigning a score of 7 out of 10 possible points to Korrekt's proposal under this evaluation factor.

Finally, Korrekt challenges the agency's evaluation of its proposal with regard to the quality of frames factor, under which its proposal received only 7 of 15 possible points. As noted above, offerors were required to submit 36 frames (12 male, 12 female, and 12 unisex) for evaluation. In its initial proposal, Korrekt submitted frames which Korrekt, itself, characterizes as "budget frames with limited features," elaborating that, in the past, "[w]e [Korrekt] have been awarded VA contracts using these types of frames." Protester's Comments at 2. In response to the agency's stated concerns regarding the quality of its frames, Korrekt twice submitted different

⁶ In passing, we note that, while Korrekt alternatively represented that it was producing 500 and 550 pairs of glasses per day, its actual production of 91,480 glasses during the year 2000 reflects an average production rate of 366 pair of glasses per day (assuming a 5-day work week and 50 work weeks per year).

frame selections, including a number of “NYI” frames with its final submission which the agency evaluated as being of inferior quality. Specifically, the TEP Chair concluded that “NYI frames did not appear durable, bending easily.” Agency Report, exh. 17, Memorandum from TEP Chair to Contracting Officer (May 18, 2001).

In resolving this protest, GAO conducted a recorded telephone hearing during which testimony was obtained from the TEP Chair concerning, among other things, the basis for and process used to evaluate the frames. During this hearing both Korrekt personnel and their counsel were given opportunities to cross-examine the TEP Chair regarding the evaluation. Based on the record as a whole, including the TEP Chair’s testimony, Korrekt has not demonstrated that the agency’s evaluation of its frame selection was unreasonable.⁷

Meaningful Discussions

Finally, Korrekt maintains that the agency failed to conduct meaningful discussions in that it did not adequately advise Korrekt of the areas of its proposal that required correction and/or amplification. We disagree.

As discussed above, in its discussions with Korrekt, the agency specifically advised Korrekt of its concern with Korrekt’s “ability to fabricate lenses” and its “[a]bility to handle daily volume of contract”; its concern with the quality of Korrekt’s multiple frame submissions, referring to the “overall poor frame selection” and advising Korrekt that its selection “overall lacked quality”; and its concern with Korrekt’s quality assurance plan, advising Korrekt that its proposal contained “[n]o evidence of QA plan process.” Agency Report, exh. 10, Letter from Contracting Officer to Korrekt, at 1 (Apr. 2, 2001); Agency Report, exh. 14, Letter from Contracting Officer to Korrekt at 1 (Apr. 27, 2001). On this record, Korrekt was reasonably led into the areas of its proposal requiring amplification. See Aydin Computer and Monitor Div., Aydin Corp., B-249539, Dec. 2, 1992, 93-1 CPD ¶ 135 at 11.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁷ In any event, in light of our conclusion above that the agency reasonably evaluated Korrekt’s proposal under the other evaluation factors, even if Korrekt’s proposal had received the maximum possible score of 15 points under the quality of frames factor, its total rating, including price, would have remained lower than that of Safe-Lite’s proposal.