



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Intelcom Support Services, Inc.

File: B-225600

Date: May 7, 1987

DIGEST

1. Where record indicates that agency evaluated protester's proposal in a manner consistent with established criteria set forth in solicitation and the evaluation was reasonable, protest based on offeror's disagreement with evaluation is denied.
2. Protest that agency failed to hold meaningful discussions concerning three areas of weakness is without merit, where contracting agency sent protester questions that should have led the protester into the areas of its proposal with which the agency was concerned, and protester was given opportunity to revise proposal with responses to these questions.
3. Technical evaluation of proposal must be based on information provided in the proposal, and neither an offeror's past performance nor information the agency might acquire during a preaward survey can be considered as a basis for technical evaluation of proposal.
4. In a negotiated procurement there is no requirement that award be made on the basis of the lowest cost. The contracting agency has the discretion to select a superior technical proposal rather than a lower rated, lower cost proposal where under evaluation criteria set forth in solicitation cost considerations are secondary to technical merit in proposal evaluation.

DECISION

Intelcom Support Services, Inc., protests the award of a contract to TECOM, Inc., under request for proposals (RFP) No. F33601-86-R9009 issued by the Air Force for the provision of vehicle operation, maintenance, and analysis for the vehicle fleet at Wright Patterson Air Force Base, Ohio. Intelcom contends that the Air Force improperly evaluated

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its proposal, and that the award of the contract to TECOM at a higher price than that proposed by Intelcom was improper.

We deny the protest.

The solicitation called for a fixed-price contract covering the period from January 1, 1987, through September 30, 1987, with options for 4 years. The performance work statement stipulates that the contractor will provide all personnel, equipment, tools, materials, and supervision, as well as other items and services necessary to perform the work required for the fleet of approximately 1500 vehicles at Wright-Patterson. Each offeror's technical package was to include details concerning work procedures, staffing, scheduling, training, quality control, supplies, and equipment to maintain the fleet.

Under the evaluation and selection criteria set forth in the solicitation, technical proposals were to be evaluated--in descending order of importance--in the areas of management, production, and quality. The solicitation further stated:

" . . . [A]ward shall be made to that contractor whose proposal is determined to be the most advantageous to the Government, price and other factors considered. . . . [C]ost/price will be a secondary consideration to the three areas of primary consideration and the government reserves the right to award the contract to other than the lowest proposed price. The Government can award to other than the low offeror."

In response to the solicitation, five proposals were received, all of which were determined to be within the competitive range. The proposals were evaluated and rated consistent with the evaluation criteria set forth in the solicitation. Prior to requesting best and final offers, the agency conducted discussions with offerors which, it states, consisted of "very detailed explanations and specific responses to all points and questions raised." Following the evaluation and ranking of best and final offers, the source selection team selected TECOM's proposal as the most advantageous to the government. The record shows that TECOM's offer was the highest ranked technically. Intelcom's offer was ranked the second highest offer technically and it submitted the lowest priced offer. TECOM's price exceeded Intelcom's proposed price by approximately 8 percent (\$2,357,351).^{1/}

^{1/} Intelcom's offered price was \$25,929,109; TECOM's price was \$28,286,460.

The source selection official determined that award to TECOM, although higher priced than Intelcom's offer was justified because TECOM's proposal offered "significantly more to the project in terms of management personnel, background, and experience as well as production planning and quality control procedures." The source selection official specifically concluded that TECOM's offer was superior "in terms of technical qualifications and ability to fulfill the [contract] . . . requirements," and that the difference in cost was more than offset by the technical superiority of TECOM's offer.

Following notification of the award to TECOM, Intelcom requested and was granted a debriefing. Subsequent to the debriefing, Intelcom protested that it should have received the award since its proposal was the lowest priced and found to be technically acceptable.

The Air Force advised Intelcom at its debriefing that Intelcom's proposal was downgraded and lower ranked than TECOM's because (1) the description of the firm's past experience was not sufficiently detailed, with specific reference to the number of dispatches, fleet size, and number of work orders it had handled; (2) the maintenance organizational chart and maintenance manloading chart were inconsistent; and (3) the ratio between the proposed quality control personnel and production personnel was lower than the Air Force's standard.

The protester disputes the agency's findings. It argues that the Air Force's rejection of its proposal was improper and unfair because it "adversely" evaluated Intelcom's proposal by determining it to be weak with respect to factors which the solicitation did not require or specify as evaluation criteria, and with respect to information the agency did not otherwise request through discussions. The protester further argues that the Air Force improperly failed to consider information which was not contained in its proposal but which the agency could have properly obtained during a preaward survey, or which was known to some members of the technical evaluation team as a result of Intelcom's previous incumbency as a vehicle operations and analysis contractor at Wright-Patterson Air Force Base. Essentially, the protester contends that the aspects of its proposal which, during the debriefing, the agency pointed out as weaknesses for which it was downgraded did not exist in some instances, and in other instances, were "exceedingly minor and did not detract from [its] proposals."

Concerning the protester's assertion that the solicitation did not require prior experience information as to fleet size or numbers of dispatches and work orders, and that such

"criteria" were trivial and inappropriate, we note that an attachment to the solicitation which detailed information required to be submitted in the management area for purposes of technical evaluation specifically requested--among certain other minimum requirements--the size of fleet involved in each of the offeror's contracts over the past 10 years. Moreover, it is clear from the language in that attachment that appropriate information to be submitted concerning the offeror's experience was not limited or restricted to what was specifically requested, but that the information "should contain at least" those details specified. Thus, the protester's contentions are not supported by the record. We recognize that the attachment did not specifically request numbers of dispatches and work orders (nor, as the protester contends, did the attachment pertaining to information required in the area of quality state a "minimum requirement" for the ratio of quality control personnel to production personnel). Nevertheless, it was not improper or unreasonable for the agency to evaluate offers on the basis of such factors since it is not required that an RFP state the contracting agency's model expectations formulated for purposes of evaluating competing proposals. See Personnel Decisions Research Institute, B-225357.2, Mar. 10, 1987, 87-1 C.P.D. ¶ ____ at 9, citing Intelcom Support Services, B-222547, Aug. 1, 1986, 86-2 C.P.D. ¶ 135 at 4.

Intelcom's further contention that the Air Force failed to conduct meaningful discussions is based on allegations that during discussions the agency did not point out to Intelcom the need for additional information in the area of experience, the inadequacy of its quality control personnel to production personnel ratio, or the apparent inconsistency between its maintenance manloading and maintenance organizational charts. A contracting agency is not obligated to afford offerors all-encompassing negotiations or discussions, even though the agency should be as specific as practical considerations permit. Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 C.P.D. ¶ 244 at 5. Where a proposal is determined to be technically acceptable and in the competitive range, the agency is not obligated to discuss every aspect of it that has received less than the maximum possible score. See Ira T. Finley Investments, B-222432, July 25, 1986, 86-2 C.P.D. ¶ 112 at 8-9.

Here, the record indicates that the agency did raise in discussions the concerns for which Intelcom was downgraded in the area of experience, ratio of quality control personnel to production personnel and the apparent inadequacy of and inconsistency in the manning levels. For example, the agency specifically advised Intelcom of its failure to provide ratio of quality control personnel to production personnel as required under the RFP, and also pointed out other problems

with its quality control personnel. With regard to experience, the record shows that Intelcom was advised that vehicle maintenance and operations analysis experience appeared insufficient and asked Intelcom to elaborate on its initial offer. Since the RFP clearly required offerors to provide fleet sizes of their contracts over the prior 10-year period, we think Intelcom clearly was on sufficient notice of this deficiency and what was required. Finally, the particular inconsistency between the maintenance manloading chart and the maintenance organizational chart, which made it unclear whether Intelcom was offering sufficient parts/supply staffing, was not specifically raised as a deficiency. However, the record shows that the Air Force pointed out general inadequacies in providing manning to meet contract requirements, and noted general inconsistencies in the manning proposals. Based on this record, we conclude that the Air Force met its obligation to conduct meaningful discussions with Intelcom. Bauer of America Corp. & Raymond International Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 C.P.D. ¶ 380 at 4.

Furthermore, the protester's allegation that, by not seeking clarification of the inconsistency between its maintenance organizational and maintenance manloading charts, the agency violated the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.607, governing mistakes, is without merit. The protester takes the position that, in its technical proposal, the omission in the maintenance manloading chart of a parts staff was an "obvious mistake" because its plan to use a five man parts staff as shown in the maintenance organization chart was corroborated by information in its price proposal.

As noted above, in the discussion questions directed to the protester, the agency pointed out that the protester's initial technical offer was inconsistent and failed to indicate adequate manning. The record indicates that the protester failed to resolve adequately this matter in its best and final offer. Further the RFP required that offerors submit their technical and cost proposals under two distinct covers, and offerors were cautioned that the data submitted with each proposal should be complete and sufficient to enable the evaluation board to ascertain fully the offeror's capability to perform the solicitation requirements. The solicitation further indicated that technical and price proposals were to be evaluated separately by two different evaluation teams. Thus, the proposal evaluation scheme set forth in the solicitation renders without merit the protester's view that the discrepancy between the two charts should have been resolved by the information contained in the price proposal and that it should have been clear to the agency that the proposal contained an "obvious" mistake for which the agency was required by the FAR, 48 C.F.R. § 15.607, to seek clarification.

Also without merit are Intelcom's contentions that the technical evaluation team improperly failed to consider information concerning Intelcom's experience allegedly known to some of the evaluation team members through prior dealings with the firm and that, as a part of its technical evaluation, the agency improperly considered "issues" pertaining to Intelcom's corporate experience which should have been "examined in detail as a part of the Air Force's 'Preaward Survey'" It is well established that an offeror's technical evaluation is based on information submitted in its proposal, and an offeror runs the risk of having its proposal rejected if it does not submit an adequately written proposal. Henderson Aerial Surveys, Inc., B-215175, Feb. 6, 1985, 85-1 C.P.D. ¶ 145; see Twin City Construction Co., B-222455, July 25, 1986, 86-2 C.P.D. ¶ 113. Further, there is no legal basis for favoring a firm with presumptions on the basis of the offeror's prior performance; rather, as was stated in the subject solicitation, all offerors must demonstrate their capabilities in their proposals. Del-Jen, Inc., B-216589, Aug. 1, 1985, 85-2 C.P.D. ¶ 111 at 6. Moreover, a preaward survey is not to be used, as the protester suggests, to supplement informational deficiencies in a technical proposal. An agency may at its discretion conduct a preaward survey for the specific purpose of establishing the responsibility of a bidder or offeror that has ostensibly won the competition for the contract. ATI Industries, B-215933, Nov. 19, 1984, 84-2 C.P.D. ¶ 540. We conclude, therefore, that Intelcom has failed to show that the agency's evaluation of its technical proposal was unreasonable.

The protester further maintains that the contract was improperly awarded to TECOM at a higher price because "CICA [The Competition in Contracting Act of 1984] requires the Air Force to award to the offeror whose proposal is 'most advantageous to the United States considering only price and the other factor[s] included in the solicitation.'" (Emphasis in original.) Intelcom expresses the view that its proposal was "nearly perfect . . . in terms of the items required by the solicitation" and that TECOM's proposal "provided no additional value." Alternatively, the protester speculates that TECOM offered something not required by the RFP upon which the Air Force improperly based the award decision.^{2/} We

^{2/} Intelcom has vigorously argued, in this regard, that it has been disadvantaged in advocating its case because of the Air Force's refusal to furnish Intelcom a copy of TECOM's proposal and the technical evaluation results. Such documents are generally considered proprietary and/or confidential and, therefore, not releasable to protester. The agency has, however, provided copies of these documents to our Office for our in camera review.

note in this regard, that the protester's submissions suggest that it considered the subject RFP to have been very much in the nature of a sealed bid solicitation, wherein are stipulated precise details, specifications, and procedures with which the contractor is to comply, so that there is no occasion for differences or distinctions between proposals such as job approach, levels of production, or the quality and efficiency with which services will be rendered, but award is made on the basis of price and price-related factors. Thus the protester states:

" . . . [T]here is absolutely no room for innovation or for a contractor to propose a different approach to successful contract performance. Instead, contractors could only be judged on their prices and on whether or not they possessed sufficient management and experience to perform the contract tasks."

However, the basis for award here is not so limited as the protester's comments indicate. In view of the complex and comprehensive range of services involved in this procurement, the Air Force sought proposals containing detailed information about such technical considerations as the offeror's quality of performance and quality control, provisions for safety assurance, plans for logistical support, as well as management qualifications, experience, capability, and plans, in addition to the offeror's price.

Where the use of negotiated procurement procedures is necessitated by the nature of the procurement and the RFP provides that technical factors are more important than cost, following discussions, if warranted, and submission of best and final offers, an agency may award to a higher priced, technically superior offeror if the higher price is offset by the advantages of the technically superior proposal. 10 U.S.C. § 2305 (Supp. III 1985); BDM Management Services Co., B-220385, Jan. 29, 1986, 86-1 C.P.D. ¶ 104; Price Waterhouse & Co., B-203642, Feb. 8, 1982, 82-1 C.P.D. ¶ 103.

As the protester contends, we have held that where the record contains no justification for a cost/technical tradeoff, an award based on a significantly higher priced proposal is improper if the technical rating of the higher priced proposal is only slightly better than that of the lower priced proposal. DLI Engineering Corp., B-218335, June 28, 1985, 85-1 C.P.D. ¶ 742. However, the protester is not correct in its view that, based on this line of cases, the Air Force's award to TECOM was improper because a justification was not provided for the award in view of the cost premium involved.

The Air Force has stated that TECOM's proposal package was superior to all others and the most advantageous to the government in that it "clearly offers significantly more to the project in terms of management personnel, background, and experience, as well as production planning and quality control procedures" and its higher cost is "more than offset by the superior characteristics" of its technical proposal.

Based on our review of the record we do not find the source selection award decision unreasonable. Although Intelcom states that its technical proposal was "almost perfect," in addition to the agency's concerns stated at the debriefing, its proposal was downgraded for failing to comply with several solicitation requirements which, while not discussed in the agency's response to the protester, are clearly germane to the technical merits of the proposal. For example, the RFP performance work statement required that the contractor provide a contract manager and an alternate who would be available during normal duty hours within 30 minutes to meet on the installation with designated government personnel when necessary or outside of normal hours within 1 hour. Under Intelcom's proposal the manager for this project would be shared with another of Intelcom's projects at West Point, an arrangement that could potentially jeopardize the provision of services under this contract or that of another facility. Further, the solicitation required that the offeror describe its plan for resolution of workload priority conflicts and the agency indicated in discussions that Intelcom's proposal failed to indicate under this category how adverse personnel or resource conditions would be alleviated. However, Intelcom failed to respond to this matter in its final offer.

On the other hand, the agency found that TECOM's offer was superior in its approach which guaranteed minimum full-time manning levels and assessed a financial penalty for failure to meet the promised levels. The agency also rated TECOM superior for its corporate management level accountability especially with regard to quality assurance, TECOM's prior maintenance and operations experience, and the project officer's and listed personnel's strong backgrounds in the vehicle operations and maintenance field. Under these circumstances and in view of the fact that Intelcom's final proposal contained some inconsistencies, especially in regard to manning, and did not provide all required information, we find the Air Force's evaluation of Intelcom's proposal was not

unreasonable or that the award to TECOM as the higher priced, technically superior offer was improper. See Sigma Systems, Inc., B-225373, Feb. 24, 1987, 87-1 C.P.D. ¶ ____.

The protest is denied.

Harry R. Van Cleve
Harry R. Van Cleve
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