



The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Diversified Contract Services, Inc.

File: B-228168.3

Date: May 17, 1988

### DIGEST

1. Award to higher priced, higher technically ranked offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and agency reasonably concluded that protester's lower proposed price did not outweigh the technical advantages demonstrated in competitor's higher priced proposal.
2. When record clearly indicates that deficiencies in protester's proposal were brought to its attention, agency conducted meaningful discussions with protester.
3. A technical evaluation of a proposal must be consistent with the evaluation criteria set forth in the solicitation and be based on the information submitted with the proposal. Protester's argument that prior performance of a 90-day interim contract should have been reflected in the technical evaluation of its proposal is without merit where solicitation's evaluation criteria did not include such factor and protester's proposal did not include information concerning the prior performance.
4. When a protester neither alleges nor establishes that a contract was awarded with the intent to modify it or that the proposed modification is beyond the scope of the contract, the proposed contract modification is a matter of contract administration and beyond the bid protest jurisdiction of the General Accounting Office.

### DECISION

Diversified Contract Services, Inc., protests the contract award to Colbar, Inc., under request for proposals (RFP) No. DABT56-87-R-0030, issued by the Department of the Army for full food and mess attendant services at Fort Belvoir, Virginia.

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Diversified contends that it should have received the award since it submitted a lower-priced proposal than did the awardee and the difference in technical capability between the two proposals did not justify award to the higher-priced, higher-rated proposal. Diversified also alleges that the Army failed to conduct meaningful discussions because Diversified was not "made aware that [it] was technically deficient in any areas" until it was debriefed by the contracting officer after award, when it was told that its proposal's standard operating procedures for menu items were deficient. The protester further maintains that the technical evaluation was improper because the evaluation did not take into account the protester's allegedly satisfactory prior performance of a 90-day interim contract pending resolution of a prior bid protest on this same solicitation. Diversified also contends that the Army is preparing a modification of the performance quality standards of the contract awarded to Colbar and that this modification will give an unfair advantage to Colbar.

We deny the protest.

The RFP was issued on August 3, 1987, and was subsequently amended several times. The RFP, in its final form, provided for award of a firm, fixed-price contract for full food and mess attendant services for a base year and 2 option years. The RFP further provided that option prices were to be evaluated for purposes of award, but award was to be made only for the base period. The RFP also included three performance alternatives for each of the 3 years. Award was to be made for only one of the three performance alternatives with utilization of one or another of the three alternatives to be driven by available funding. In the event the Army decides, during contract performance, to change to a performance alternative different than that awarded, the Army would pay the contractor an additional fixed price for mobilization/demobilization, which was listed as a separate line item in the bid schedule. Award was to be made to the offeror whose proposal conformed to the solicitation and was considered the "best overall response." "Best overall response" was defined in the RFP as "the response that is evaluated as the most superior technically with a realistic estimated cost." The RFP added that "in the event two or more proposals are assessed as substantially equal, the lower of lowest estimated cost considered realistic shall be determinative."<sup>1/</sup>

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<sup>1/</sup> Since the RFP contemplated award of a firm, fixed-price contract, cost, as used by the agency, apparently means price.

The RFP listed, in relative order of importance, the following evaluation factors: (1) Compliance with statement of work (80 points); (2) cost (10 points); and (3) organizational experience (10 points). The points in parentheses were used by the Army in evaluating proposals but were not listed in the RFP. Evaluation of best and final offers yielded the following technical point scores:

	<u>Colbar</u>	<u>Diversified</u>	<u>Hamilton</u>
Compliance with statement of work	70.48	65.61	57.38
Organizational experience	<u>7.37</u>	<u>9.03</u>	<u>5.90</u>
Total Technical Score	77.85	74.64	63.28

Diversified's proposal was evaluated as offering the lowest price and received the full 10 points for cost. Colbar and Hamilton received cost points for their proposals of 9.7 and 7.0, respectively, using Diversified's price as a benchmark.<sup>2/</sup> Total point scores for technical and cost evaluation were as follows: Colbar--87.55 points; Diversified--84.64 points; and Hamilton--70.28 points. Based on the above scores, award was made to Colbar on March 8, 1988, for the base year under the second performance alternative. Diversified filed its initial protest in our Office on March 22. Diversified amended its initial protest several times, raising additional issues. Since Diversified's initial protest was not filed within the 10 calendar days necessary to trigger the suspension provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d) (Supp. III 1985), contract performance has not been suspended.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the RFP specified that cost will be the determinative

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<sup>2/</sup> In its protest, Diversified alleges that the contracting officer "did not consider overall and/or total proposal costs" as indicated in the RFP and, therefore, "did not award the contract based upon the total solicited price." We find this allegation to be unsubstantiated since the record indicates that the agency did, in fact, evaluate prices for all three performance alternatives for the base and option years.

factor. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. In assessing the relative desirability of proposals and determining which offer should be accepted for award, the procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation. Comarco, Inc., B-225504, B-225504.2, Mar. 18, 1987, 87-1 CPD ¶ 305. We will not question such a determination unless there is a clear showing of unreasonableness, abuse of discretion, or a violation of the procurement statutes or regulations. Comarco, Inc., B-225504, B-225504.2, supra. The burden is not met by the protester's mere disagreement with the evaluation or its good faith belief that its own proposal should have achieved a higher rating. Sigma Systems, Inc., B-225373, Feb. 24, 1987, 87-1 CPD ¶ 205.

Our review of the record reveals that the agency's award decision comported with the solicitation evaluation criteria. The solicitation indicated that award of the contract was to be made on the basis of technical superiority provided the prices received were considered reasonable. Based on the above evaluation results, the Army's contracting officer determined that Colbar's proposal was technically superior and offered a reasonable price, which was only 3 percent higher than Diversified's price. The contracting officer considered the 4 percent difference in the technical ratings between Diversified and Colbar's proposals to be significant enough to justify award to Colbar. Since this cost/technical tradeoff was consistent with the solicitation's evaluation factors, we find that the agency had a reasonable basis for selecting Colbar. Diversified's mere disagreement with this determination is not enough for us to question the contracting officer's decision.

Diversified's allegation that the Army failed to conduct meaningful discussions is without merit. The agency report contains a record of the oral discussions conducted with Diversified and other offerors. Four areas of deficiency concerning compliance with the solicitation's statement of work were discussed with Diversified, including standard operating procedures for menu items. Diversified submitted its written response on October 13, 1987, addressing all four of the topics mentioned during discussions. Where, as here, the record clearly indicates that deficiencies in the protester's proposal were brought to the protester's attention, the agency conducted meaningful discussions. See, Jones & Co., Natural Resource Engineers, B-228971, Dec. 4, 1987, 87-2 CPD ¶ 555.

We also find without merit Diversified's contention that the technical evaluation was improper because it did not take into account Diversified's performance of a 90-day interim contract on this same requirement pending resolution of a bid protest.<sup>3/</sup> The contracting officer's technical evaluation was conducted in accordance with the evaluation factors listed in the RFP and based on the information submitted in Diversified's proposal. The RFP's evaluation factors did not include criteria for evaluation of performance of the 90-day interim contract, nor did Diversified's proposal contain such information. A technical evaluation of a proposal must be consistent with the evaluation criteria set forth in the solicitation and be based on the information submitted with the proposal. See, e.g., Mictronics, Inc., B-215266, Nov. 13, 1984, 84-2 CPD ¶ 521. The Army, therefore, properly did not consider Diversified's performance of the interim contract during evaluation of its proposal. Also, according to the Army, the interim contract was awarded based upon cost alone, without consideration of technical factors, and was of such short duration as to prohibit any realistic projection of future performance over a much longer period.

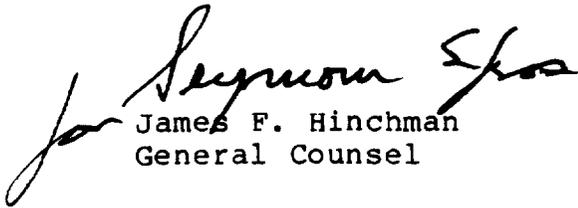
As Diversified contends, the Army is preparing a modification of the contract awarded to Colbar. The proposed modification concerns the performance quality standards of the contract which give rise to deductions from contract payments for deficient performance. The Army has discovered an inconsistency in the various contract provisions relating to the quality standards and payment deductions. According to the Army, it is preparing the modification in order to clarify the payment deduction procedures to make it clear that only deficiencies found in nonreperformable tasks are to be counted for purposes of calculating payment deductions, as is consistent with the mandatory Federal Acquisition Regulation (FAR) clause "Inspection of Services--Fixed Price," found at FAR § 52.246-4 (FAC 84-12), and incorporated by reference in the RFP. In the absence of evidence other than the protester's speculative statements that a contract was awarded with an intent to modify it, we will not question a contract modification unless it is shown to be beyond the scope of the original contract, so as to

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<sup>3/</sup> Two protests from other competitors were filed and resolved concerning this solicitation. As a result, the Army awarded two 90-day interim contracts pending resolution of the protests. One of the interim contracts was awarded to Diversified and the other to Colbar.

require a separate procurement. See, e.g., Shamrock Industries, Inc.; Southern Plastics Engineering Corp.-- Reconsideration, B-225216.2; B-225216.3, Mar. 18, 1987, 87-1 CPD ¶ 302. Diversified does not allege nor establish that the Army awarded the contract with the intent to modify it or that the proposed modification is beyond the scope of the original contract. Accordingly, we find the proposed modification to be a matter of contract administration outside our Office's bid protest jurisdiction.

The protest is denied.

  
James F. Hinchman  
General Counsel