



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Questech, Inc.

File: B-236028

Date: November 1, 1989

DIGEST

1. Agency determination to make award to high technically rated, high cost offeror under request for proposals, giving more weight to technical factors, was rationally based and consistent with the evaluation criteria, where the agency found the awardee was significantly more technically qualified than the lower cost protester.
2. Agency may consider negative reports on past and present contract performance on relevant work to assess performance risk, where this criterion is specified among the evaluation criteria of the solicitation.
3. Agency generally satisfied its obligation to conduct meaningful discussions by leading an offeror into the specific areas of its proposals which were found deficient.
4. Although agency failed during discussions to point out a deficiency in a protester's proposal as it should have done under Federal Acquisition Regulation § 15.610 (FAC 84-16), the protester was not prejudiced so as to justify sustaining the protest where the awardees still have a significant technical advantage over protester's low cost proposal, even assuming this deficiency was corrected.

DECISION

Questech, Inc., protests the award of two indefinite quantity, time and material contracts^{1/} by the Air Force Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio, under RFP No. F33657-89-R-0027 to the Analytic

^{1/} The request for proposals (RFP) specifically provided for multiple awards to provide these support services, including one set aside for small business. The third, set-aside, award is not the subject of this protest.

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Sciences Corporation (TASC) and to General Research Corporation (GRC). These contracts are for studies/analyses and technical support services in support of the Air Force Industrial Base Program.

We deny the protest.

The RFP stated that the technical area was the most important evaluation criterion followed by the management area and then cost. The technical area had five equally rated factors representing areas of work to be completed under the RFP and the management area had four equally rated factors. Each of these evaluation factors was to be assessed for "understanding the requirement" and for "soundness of approach." The RFP also provided that two types of risks would be assessed for each proposal: (1) proposal risk, that is, the risk associated with the offeror's effort on each of the evaluation factors and (2) performance risk, based upon the offeror's present and past performance as it related to the probability of successfully accomplishing the proposed effort, as evidenced in its proposal and by independent Air Force data. Cost was evaluated in the form of composite weighted hourly labor rates. The RFP provided that the selections would be based on an integrated assessment of the proposals as rated under the evaluation criteria and considering "performance risk" as a "general consideration" to determine which proposals represented the best value to the government.

Nine proposals were received and all were included in the competitive range. After responses to written discussions and best and final offers were submitted and evaluated, Questech was determined to be the fifth rated offeror with an overall acceptable rating. Questech had a composite hourly rate of \$52.58. The three awardees were the top rated offerors with overall "acceptable" ratings.^{2/} GRC had a composite hourly rate of \$48.52 and TASC an hourly rate of \$64.07. The record shows that GRC was selected as the highest rated offer with a relatively low cost and that TASC was selected, notwithstanding its higher cost, instead of Questech, because Questech was determined "significantly less technically qualified" than TASC.

^{2/} After receipt of the report, Questech protested any award to the fourth rated offeror, who received no award under the RFP, alleging that offeror had an organizational conflict of interest. Since we deny the protests of the actual awards under the RFP, we need not decide Questech's protest of this potential award.

Although the primary focus of Questech's protest is that meaningful discussions were not conducted with it, Questech also contests TASC's selection as not being in accordance with the evaluation criteria. Questech contends that it should have been selected because of its lower cost and because it has performed under another Air Force contract work identical work to that required by this RFP.

With regard to cost, however, we note the RFP provided that cost, although a significant factor, was of less importance than either the technical or management areas. We have consistently held that award can be made to higher rated, higher cost offerors where rationally based and, consistent with the RFP criteria. Systems & Processes Eng'g Corp., May 10, 1989, 89-1 CPD ¶ 441; Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409. Here, the record shows that a specific cost/technical tradeoff was performed and it was determined that TASC was significantly more technically qualified than Questech justifying an award to TASC, notwithstanding its higher cost. Questech has not shown this decision was unreasonable or not in accordance with the evaluation criteria. Id.

The only specific evaluation area contested by Questech is how its "performance risk," that is, past and present performance, was evaluated. The record shows that Questech's performance risk was rated "moderate," whereas all the other offerors' performance risks were rated low. Questech contends that the Air Force unreasonably considered only a small sample of the contracts listed in Questech's proposal in evaluating its performance risk.

The record confirms that not all references were checked in evaluating Questech's performance risk. However, there is no legal requirement that all references listed in a proposal be checked. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715; Basic Technology Inc., B-214489, July 13, 1984, 84-2 CPD ¶ 45. In this case, almost all the contract references submitted by Questech involved Air Force contracts. The record shows that Questech received two negative reports from one Air Force activity about Questech's contract performance on related contract work. In addition, some very positive responses from references were received. The negative reports caused the evaluators to question whether Questech could successfully accomplish the RFP work, notwithstanding what Questech promised, in its proposal, and thus Questech's performance risk was rated "moderate."

We find it neither surprising nor unreasonable for the evaluators to take more interest in the negative reports regarding Questech's performance, particularly since they involved contract work relevant to this RFP. Indeed, these negative reports were for work on a contract which the protester, in its initial protest, ironically cited as a primary reason that it should be selected for award. Under the circumstances, we find the Air Force reasonably evaluated Questech's performance risk.

Questech's protest primarily focuses on its contention that the discussions were not meaningful since all of its evaluated deficiencies were not brought to its attention. In order for discussions on a negotiated procurement to be meaningful, contracting agencies must furnish information to all offerors in the competitive range as to the areas in their proposals which are believed to be deficient so that offerors may have an opportunity to revise their proposals to fully satisfy the government's requirements. Federal Acquisition Regulation § 15.610 (FAC 84-16); Pan Am World Servs., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446. However, the content and extent of discussions is a matter of the contracting officer's judgment based on the particular facts of the procurement. Huff & Huff Serv. Corp., B-235419, July 17, 1989, 89-2 CPD ¶ 55. In evaluating whether there have been meaningful discussions, the focus is not on whether the agency describes deficiencies in such detail that there could be no doubt as to their identity and nature, but whether the agency imparted sufficient information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. Syscon Servs., Inc., B-235647, Sept. 21, 1989, 68 Comp. Gen. ____, 89-2 CPD ¶ ____. There is no requirement that all-encompassing discussions be conducted; rather, agencies are only required to reasonably lead offerors into those areas of their proposals needing amplification. Syscon Servs., Inc., 68 Comp. Gen. ____, supra; URS Int'l, Inc., et al., B-232500, B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ 21.

Questech complains meaningful discussions were not conducted with it in the area of its present and past performance, as to which it received the "moderate" performance risk rating discussed above. However, the record shows that the Air Force specifically advised Questech during discussions that its past performance for the Air Force activity identified above "reflect marginal performance with respect to satisfactorily accomplishing final reports." The Air Force requested Questech to respond to these concerns.

Questech contends that these discussions did not adequately apprise it of all the specific concerns about Questech's performance, nor of the magnitude of these concerns. In this regard, Questech notes that some of the negative comments from that activity stated that Questech's performance was unsatisfactory in some respects, rather than merely marginal, and that far more details regarding that Air Force activity's opinion of Questech's performance could have been communicated to Questech so it could have the opportunity to alleviate the Air Force concerns about its performance risk.

Questech's protest on this point lacks merit. It is clear that the Air Force imparted sufficient information to Questech to show its serious concern over Questech's past and present performance. A reference to "marginal" performance on a contract for work similar to that required under the RFP is certainly sufficient to indicate to Questech that it needed to address these concerns. See Schneider, Inc., B-214746, Oct. 23, 1984, 84-2 CPD ¶ 448. Indeed, Questech responded to the Air Force concerns with a series of proposed management changes, which the evaluators and the Air Force activity representative characterize as "a reasonable plan of attack for management to potentially correct past problems," but the activity representative was "still concerned about the offeror's ability to satisfactorily accomplish tasks," given the number of problems and Questech's past inability to correct them. Consequently, we find the Air Force satisfied its obligation to conduct meaningful discussions on this point.

Another area where Questech alleges that discussions were not adequate involved the "Title III Program Assessment" technical evaluation factor. This area was the most noteworthy deficiency in Questech's initial and final evaluations, where a "marginal" rating for both "soundness of approach" and "understanding of the requirement" was assigned, together with a high risk that it could not successfully accomplish this task work. The evaluators specifically found that Questech's proposal lacked evidence of specific knowledge of the Title III program of the Defense Production Act and that its technical approach in this area was very weak. The evaluators concluded these deficiencies could result in program, schedule and cost impacts in implementing the Title III program. During written discussions, Questech was issued a "deficiency report" which stated: "Offeror failed to adequately address their approach for providing technical and management support to the Title III program" and that "failure to provide adequate technical support to the Title III program

could jeopardize the ability to evaluate materials and contractors for Title III projects."

Questech contends that these discussions were inadequate since they only covered the Air Force's concern with Questech's Title III technical approach and did not evidence any concern over Questech's "lack of knowledge" or "understanding" of the Title III program, which were Questech's primary evaluated weaknesses in this area.

We disagree. The deficiency report was sufficient to apprise Questech that the Air Force was seriously concerned with all aspects of Questech's response to the Title III program requirements. See Range Technical Servs., 68 Comp. Gen. 81 (1988), 88-2 CPD ¶ 474. In this regard, we believe a "failure to address" certain requirements can be as indicative of a lack of understanding of a requirement as of a poorly stated technical approach. In any case, it was certainly sufficient to lead Questech into the area of concern. Indeed, Questech attempted to demonstrate its understanding and knowledge of the Title III requirements in its response to this deficiency report. Therefore, we find no merit to Questech's argument that the Air Force discussions were not sufficiently specific on this point.

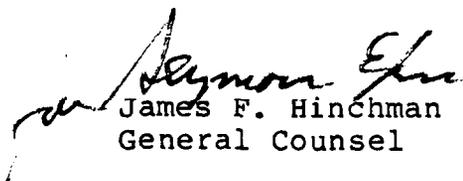
Finally, Questech protests the Air Force's failure to point out during discussions the evaluated weakness of "over emphasis on questionnaires for data gathering" in Questech's proposal's response to the "Department of Defense Industrial Base Assessment" technical factor. In this regard, the evaluators also found that the Questech proposal failed to recognize that certain government offices are a primary source of data for this task.

No comments related to this evaluated problem were brought to Questech's attention during discussions. The Air Force claims that since this was a "weakness" in Questech's proposed approach, rather than a "deficiency," it did not point out this problem for fear of technical leveling.

However, the Air Force assigned Questech a marginal rating for its "soundness of approach" for this factor. This is indicative that the Air Force regarded Questech's evaluated over emphasis on questionnaires as a "deficiency," rather than a "weakness." Therefore, under FAR § 15.610, we think the Air Force should have pointed this problem out to Questech during discussions. However, we do not believe Questech was prejudiced by this failure in this case so as to justify sustaining its protest on this point, since the record shows that the awardees would still have a significant technical advantage over Questech, even assuming it

was rated "acceptable" for all aspects of this factor. URS Int'l et al., B-232500; B-232500.2, supra; tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549, aff'd, B-229831.7, Dec. 2, 1988, 88-2 CPD ¶ 549, reaff'd, B-229831.8, June 21, 1989, 89-1 CPD ¶ 583.

The protest is denied.


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General Counsel