

Shearn



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Data Management Services, Inc.
File: B-237009
Date: January 12, 1990

DIGEST

Award to low acceptable offeror on basis of initial proposals was proper even though protester, after a pricing audit conducted by Defense Contract Audit Agency as part of the evaluation, offered to lower the price in its initial proposal below the price in awardee's initial proposal; procurement did not progress beyond the initial proposal stage so as to require request for best and final offers (BAFOs), there was no indication that the awardee would reduce its price in a BAFO, and the potential reduction in protester's price would not offset awardee's significant technical superiority.

DECISION

Data Management Services, Inc. (DMS), protests the rejection of its offer and the proposed award of a contract to SelectTech Services Corporation, the incumbent, on the basis of initial offers, under request for proposals (RFP) No. DAKF15-89-R-0024, issued by the Army for operation and maintenance of the Military Entrance Processing Command/Selective Service System Computer facility in Illinois.

We deny the protest.

The RFP contemplated the award of a firm, fixed-price services contract on the basis of the best overall proposal, with consideration given to the following evaluation factors listed in descending order of importance: technical, management, and price. The RFP further provided that the government might award a contract on the basis of initial offers received, without discussions.

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Four firms submitted proposals. The Army reports that prior to the commencement of proposal evaluation and in anticipation of the possible need to enter into comprehensive negotiations, the contracting officer requested the Defense Contract Audit Agency (DCAA) to perform audits of three proposals, including those of SelectTech and DMS, and provide field pricing reports pursuant to Federal Acquisition Regulation (FAR) § 15.805-5(a)(2) (to allow a detailed analysis of the proposals for use in contract negotiations).^{1/} In the interim, the agency's evaluation panel performed in-depth evaluations of the technical and management proposals, which resulted in SelectTech's technical/management proposal being rated far superior to the other proposals: SelectTech received a total technical/management score of 886 (out of a possible 920 points), with an adjectival rating of outstanding, while DMS, the next highest rated offeror, received 548 total points, with an adjectival rating of fair. (The remaining offeror, Keydata Systems, Inc., received a total score of 518.4 points.)

At the completion of technical/management evaluations, the evaluators were provided with the price proposals. SelectTech's proposed price was \$2,853,562, and DMS' was \$2,860,670. (Keydata's price of \$7,471,694 was viewed as excessively high and its proposal was not further considered.) The offered prices of SelectTech and DMS were determined competitive and comparable to historical prices and the government estimate. Based on the technical/management evaluations and the price analysis, the contracting officer determined that SelectTech's proposal was most advantageous to the government, offering the highest technical/management score and the lowest price. Consequently, the contracting officer determined to make award to SelectTech on the basis of initial proposals, without discussions.

DMS contends that award on the basis of initial proposals was precluded by FAR § 15.610, because discussions already had been initiated by the DCAA auditor; under the FAR, award based on initial proposals is permitted if the solicitation notified all offerors that award might be made without discussions and award is in fact made to the low cost offeror without any written or oral discussions with any offeror. FAR § 15.610(a)(3). DMS maintains that the

^{1/} Although it is not clear from the record, apparently the agency determined that the fourth proposal on its face was so technically unacceptable that a detailed evaluation was not necessary.

auditor persuaded the firm that \$66,460 of its estimated indirect costs of performance were mistakenly allocated to this contract, and that the auditor, apparently with the approval of the contracting officer, then requested and aided in the preparation of a revised price proposal reflecting an equivalent reduction in its price. DMS argues that the agency therefore no longer had the option of making award based on initial proposals, but instead should have solicited and evaluated best and final offers (BAFOs) from all offerors in the competitive range.

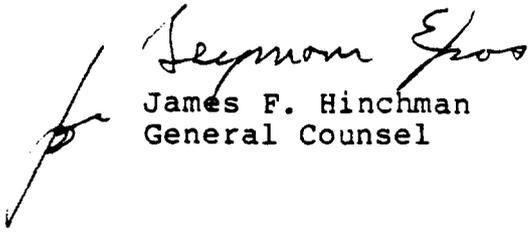
We do not agree that the procurement here proceeded beyond the initial proposal stage, and find nothing objectionable in the award based on initial proposals.

Based on the record, as discussed above, the DCAA audit, we think, clearly was intended only as a means of gathering information for use in the evaluation and possible future negotiations; it was not initiated for the purpose of entering into formal discussions with DMS. Indeed, as the proposals, including DMS', had not yet been evaluated under the evaluation scheme in the RFP (i.e., under the technical, management, and price factors), there would have been no reason for the agency to request the audit for the purpose of correcting deficiencies in the proposal or to solicit proposal revisions. Rather, it appears that the DCAA audit was requested for the purpose of determining prices for use in arriving at a final technical/management/price evaluation; the agency clearly could conduct an audit to aid in the price evaluation without obligating itself to conduct discussions. See generally Validity Corp., B-233832, Apr. 19, 1989, 89-1 CPD ¶ 389.

We conclude that the procurement never proceeded to the discussion stage, and that the agency therefore was not precluded from awarding to SelectTech based on its low, technically superior initial proposal. See generally The Saxon Corp., B-232694.2 et al., June 13, 1989, 89-1 CPD ¶ 553. The fact that DMS' price might have come down had revised offers been obtained does not change this result. Although the audit indicated DMS might have reduced its price in a BAFO, SelectTech's audit revealed no pricing discrepancies and there was no other indication that SelectTech could have been expected to lower its price to any significant degree. (Of course, considering that DMS' technical score was so far below SelectTech's and that technical/management were more important factors than price, even if in revised proposals DMS reduced its price while

SelectTech did not, it is not likely that DMS would have been selected for award in light of SelectTech's technical superiority.)

The protest is denied.


James F. Hinchman
General Counsel